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EVENTS SURROUNDING THE BRANCH DAVIDIAN CULT STANDOFF IN WACO, TEXAS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

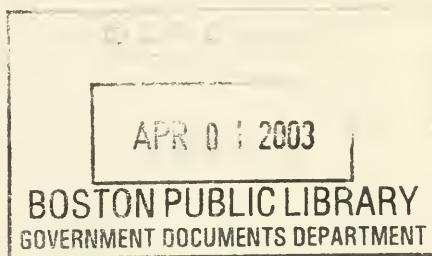
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

APRIL 28, 1993

Serial No. 95



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

90-379 CC

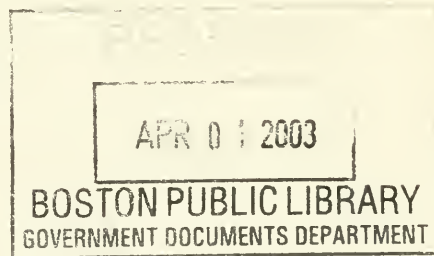
WASHINGTON : 1995

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-047257-1

170377 12/75

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EVENTS SURROUNDING THE BRANCH DAVIDIAN CULT STANDOFF IN WACO, TEXAS

WEDNESDAY, APRIL 28, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Jack Brooks (chairman of the committee) presiding.

Present: Representatives Jack Brooks, Don Edwards, John Conyers, Jr., Romano L. Mazzoli, William J. Hughes, Mike Synar, Patricia Schroeder, Dan Glickman, Barney Frank, Charles E. Schumer, John Bryant, George E. Sangmeister, Jack Reed, Robert C. Scott, David Mann, Melvin L. Watt, Xavier Becerra, Hamilton Fish, Jr., Carlos J. Moorhead, Henry J. Hyde, F. James Sensenbrenner, Jr., George W. Gekas, Howard Coble, Lamar S. Smith, Steven Schiff, Jim Ramstad, Elton Gallegly, Charles T. Canady, Bob Inglis, and Bob Goodlatte.

Also present: Jonathan Yarowsky, general counsel; Robert H. Brink, deputy general counsel; Daniel M. Freeman, counsel/parliamentarian; Marie McGlone, counsel; Allen Erenbaum, counsel; Chris Cooper, legislative analyst; John D. Cohen, investigator; Linda Jo Shelton, administrative assistant to the general counsel; Mary V. Heuer, administrative staff member; James B. Farr, financial clerk; Ralph Doty, systems coordinator; Teresa Vest, research assistant; Kenneth Prater, assistant publications clerk; Alan F. Coffey, minority chief counsel; Charles Kern III, minority counsel; Ray Smietanka, minority counsel; Kathryn Hazeem, minority counsel; Lyle Nirenberg, minority counsel; and Carmel Fish, minority counsel.

OPENING STATEMENT OF CHAIRMAN BROOKS

Mr. BROOKS. The committee will come to order.

I have called this hearing of the full Committee on the Judiciary to examine the events surrounding the standoff between Federal law enforcement agencies and members of the Branch Davidian cult near Waco, TX.

As the Members well know, hearings at the full committee level are rare enough an occurrence to be called extraordinary. I believe that the subject matter of today's hearing is appropriate for such extraordinary treatment because it cuts across multiple aspects of the committee's broad jurisdiction over law enforcement activities.

While speculative and contradictory theories have abounded, it is only in the past few days that onsite forensic teams have begun to

draw a number of tentative conclusions based on scientific observation and testing. That is all for the best, even if it departs from the scripts of the made-for-television movies already in production.

The basic chronology of events relating to the standoff and its fiery conclusion can be stated succinctly. On February 28, after an extensive investigation pursuant to legal process, a team of agents from the Treasury Department's Bureau of Alcohol, Tobacco and Firearms raided the heavily armed compound, then under control of a cult leader calling himself David Koresh, in order to serve warrants for Federal weapons violations. The raid turned into a fierce gun battle that left 4 BATF agents dead, 15 wounded, and 6 cult members dead.

There ensued a standoff for the next 51 days, during which time the Federal Bureau of Investigation assumed the lead law enforcement responsibility and attempted through a variety of tactics to persuade Koresh to lay down his weapons and let the adult and juvenile cult members leave the compound; all to no avail.

Finally, on April 19, the FBI undertook a major action to inject tear gas into the compound in an effort to drive the occupants out. The effort failed. Instead, Koresh and more than 80 of his followers died as a raging fire consumed all of the compound's buildings in a few short minutes.

However, establishing the baseline chronology of events is not the sole purpose for being here today. Rather, it is to hear from the three law enforcement officials directly responsible for the actions and the choices taken in Waco so that we can understand the decisionmaking process behind the events.

Now, I don't relish playing the part of the omniscient second-guesser when there are still facts to be ascertained, evidence to be adduced, and given the instant experts that pop up everywhere in the press, I may be in a distinct minority. What I care about is whether we have in place in our Federal enforcement agencies the capability and, yes, the creativity to deal with the increasingly disturbing situation of terrorism, whether in the high office towers of our urban centers or in small entrenched pockets of alienated citizens who operate separate and apart from society at large.

If such groups, whether they are called cults or not, pose a direct physical and violent threat to their own members or to others in society, then their operations cannot be ignored or justified through invocations to the great American tradition of the right of each citizen to be left alone. As Oliver Wendell Holmes declared, the essence of a free society is, indeed, the right to be let alone—but not at the expense of the social compact that allows all of us to live together as Americans based on our shared values.

What this committee and the public need to know is how our law enforcement agencies performed during this difficult situation. We need to know how they processed the signals and other information received from Koresh, whether they developed alternative plans of action, how they negotiated, how they prepared, and how they implemented decisions that were made.

The verdict on David Koresh's methods and aims can already be found in the Gallup polls. We are here to seek answers to weightier questions.

I am delighted our three leading law enforcement officials have made themselves available to the committee.

Now, I would just like to offer similar notes of caution about testimony we are going to hear today. First, the investigations of both the decisionmaking process and the events of last Monday are at a very preliminary stage. It may well be that answers to many of our questions will have to await completion of the forensic examination and the internal review the President has ordered of the activities of the Departments of Treasury and Justice.

Second, it may be that the witnesses will be reluctant to respond to some questions because they might expose investigative sources and methods or jeopardize the pending criminal actions against a number of cult members relating to the deaths of four BATF agents. I believe that people of goodwill can easily accommodate both these considerations and Congress' need for accurate and complete information.

We are participating in an important proceeding today and to permit all Members to have a chance to question our witnesses, I feel compelled to limit oral opening statements to the ranking minority member of the full committee and the chairmen and ranking minority members of the two subcommittees with major jurisdiction over the issues under discussion.

Of course, all Members are free and encouraged to submit individual statements for the record.

So at this point, I would yield to my distinguished friend from New York, Mr. Ham Fish.

Mr. FISH. Thank you, Mr. Chairman.

It is indeed a tragic set of circumstances that brings us here today. In recent days there has been considerable fault finding and finger pointing. Hopefully, as you have said, this hearing will get us beyond recrimination and help us to better understand what happened in Waco, why it happened, and how better to prepare for possible future similar episodes.

On Monday, April 19, 86 persons, 24 of whom were children, lost their lives. Prior to this, on February 28, four brave ATF agents were killed in the line of duty. This committee oversees the operations of the Department of Justice, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco and Firearms. It is a legitimate exercise of our legislative and oversight responsibilities to inquire into the strategies and decisions that led to the tragic events in Waco.

Moreover, the American people expect their Congress to inquire on their behalf deliberately, thoroughly, and fairly into the threat, the decisionmaking, the options, and the lessons learned.

Obviously, this was an unusual and extremely difficult situation for law enforcement officials because they were dealing with a complex, unpredictable and dangerous personality. This certainly was not the classic hostage situation, nor was it terrorism, but was this a bizarre isolated incident or a portent of things to come? We need to know whether we are facing a new and different challenge to the public safety, health, and welfare.

Law enforcement in this country today involves enormous challenges. It places great responsibility on the shoulders of law enforcement officers as well as agencies, and throughout this Nation

heroic deeds and rescues on the part of police occur daily. Certainly mistakes are made, but most often law enforcement in this country is carried out with great skill and professionalism.

Nevertheless, when a high-profile episode such as the Branch Davidian standoff occurs and results in what appears to have been an unnecessary loss of life, America asks "Why?" America and the Congress have a right to know what happened, but in this search we should not forget the difficult, almost impossible challenges that law enforcement faces every day.

So I welcome our distinguished witnesses, the Attorney General of the United States, the FBI Director, and the Director of Bureau of Alcohol, Tobacco and Firearms. Thank you for being with us. I look forward to your testimony.

Mr. BROOKS. Mr. Edwards, the gentleman from California.

Mr. EDWARDS. Thank you, Mr. Chairman.

I, too, welcome the Attorney General and the other witnesses. We are here today to listen to these witnesses, not necessarily to criticize. The President and the Attorney General have both said that the Congress should study this incident to see if there are any lessons to be learned. I am especially interested in the process by which the decisions were made. Mr. Chairman, it would be a mistake to view this as a cult issue. Religion had very little to do with the incident. It just as well could have been a white supremacist group or another group whose philosophy and identity had nothing to do with religion.

The question is: How does the Government deal with highly motivated coherent groups barricaded in a fortified compound? This is a serious issue and deserves the committee's attention and the attention of the law enforcement agencies.

Thank you.

Mr. BROOKS. Thank you very much, Mr. Edwards.

Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

The 52-day standoff between the FBI and members of the Branch Davidian sect culminated in a fiery inferno which claimed the lives of 86 people. We mourn the loss of all those inside the compound, especially the 24 children who perished last week and the 4 ATF agents who lost their lives in the initial conflict on February 28.

It certainly appears in the light of the tragic conclusion to the standoff that something went wrong. We need to know why the ATF agents were given the initial order to storm the compound in late February after it seems clear they no longer had the element of surprise in their favor.

We also need to know whether the plan put into action on the morning of April 19 was really the best available option or whether we just ran out of patience in trying to peacefully coax the group out of the compound.

We are not here today to second-guess the Attorney General, the FBI or the ATF, or try to affix political blame. Our purpose today is simply to understand the judgment calls that were made and whether or not those decisions were the most appropriate under the circumstances.

We also need to know if adequate resources, including military resources, were available or requested, and if not, why not. We

need to get answers from the past so we can learn to avoid similar situations in the future.

I look forward to hearing your testimony.

Mr. BROOKS. Mr. Schumer, the gentleman from New York.

Mr. SCHUMER. Thank you, Mr. Chairman.

I thank you for holding this hearing today, and let me say at the outset, I want to express my full confidence in the Attorney General. In my opinion, President Clinton has put an absolutely outstanding person in this difficult job. She is tough, intelligent, and possesses an integrity and forthrightness that is refreshing in Washington.

Now, I am sure that under her leadership the Justice Department's internal review will produce a complete and thorough report on this entire episode, including a full accounting of any mistakes that may have been made when all the evidence is in. That is because we are dealing with a new breed of Attorney General, one who is candid about facts and matter of fact about taking responsibility.

There may well have been errors in judgment in Waco, but we should keep in mind that mistakes in outcome are not always the results of mistakes in judgment. Personally, I would rather have Janet Reno making these judgments than just about anybody else.

We would also do well to remember that we are looking at the actions of law enforcement personnel motivated by a genuine desire to follow the rule of law. We are not dealing with a corrupt or dishonest Government agency, we are not dealing with acts of venality or coverup as in so many other scandals we have seen. And so I strongly hope we will keep all this in mind while pursuing our legitimate search to find out what went wrong.

To me, there are two key questions we need to explore in order to understand what went wrong. First, why was the element of surprise lost in the initial raid by BATF? If it was, did BATF leadership know that, and if they knew it, what was the process that resulted in going ahead with the raid anyway?

Second, what was it that led FBI officials to make the judgment that David Koresh would not destroy himself and his followers when faced with ultimate capture by law enforcement?

Now, as we look at these issues and other issues surrounding the tactical and strategic decisions in the matter, I believe it is also important not to lose sight of the fact that the real villain here was David Koresh. His and his followers' desire and willingness to use children as hostages and to ultimately sacrifice them in a ferocious act of self-immolation surely must go down as one of history's most heinous crimes.

If our ultimate goal is to avoid future Waco disasters from taking innocent lives, we also have to take a close look at how David Koresh was able to amass one of the largest and most deadly arsenals ever faced by U.S. law enforcement. We need to take a rational look at all the guns involved.

More than 10,000 rounds were fired at the BATF agents on February 28 as they attempted to serve legal arrest and search warrants at the Waco compound.

This committee will hear today about how Koresh was able to arm his followers with more than 100 fully automatic machine-

guns, grenades, and other materials such as explosives and bomb components.

This is an area where change is surely needed because once David Koresh had established himself in that compound, surrounded by children and emotionally captive adults and with that arsenal, he really held all the cards. Can anyone doubt we would be looking at a different outcome had the Branch Davidians been armed only with knives, ordinary hunting rifles or other sporting weapons?

Koresh was determined not to be taken alive, and if necessary, to take every one of his followers and as many Federal agents as possible with him. As we have seen graphically, because of weaknesses and loopholes in existing law and his own criminal intent, he had the abundant means to do so.

I will shortly be introducing legislation to address part of the problem by banning the sale of machinegun parts that can be used to convert legal firearms to machineguns unless the purchaser is a legal machinegun owner, and to ban the sale of such parts by mail in all cases. David Koresh used this weakness in the law to amass parts and convert legal weapons to the deadly fully automatic machineguns he fired.

This legislation will also prohibit the sale of large-caliber ammunition to all but law enforcement and military agencies. The .50-caliber ammunition possessed by Koresh which, although perfectly legal, can easily blow through an ordinary vehicle like a firetruck, and has no legitimate purpose in the hands of anyone.

Mr. Chairman, I know that this hearing is not specifically about guns; it is about accountability and responsibility. But I also believe if we are going to get beyond the tactical issues involved, we must adopt a strategy that recognizes the role played by guns and the excessive firepower so easily available to a madman.

I look forward to hearing our witnesses.

Mr. GEKAS. Will the gentleman yield for a moment?

Mr. BROOKS. These are opening statements.

Mr. GEKAS. You are not permitting Mr. Schumer to yield to me at this point?

Mr. BROOKS. Not at this point.

Mr. Sensenbrenner, the gentleman from Wisconsin, is recognized.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I also salute you for calling timely hearings on the disaster in Waco. I think it is very plain that the function of this hearing should not be to second-guess the activities of either the FBI or the Department of Justice, nor should it be to micromanage either of these agencies. That is not the role of the Congress of the United States.

Furthermore, we should not be involving politicians in either the executive or legislative branches of government in operational decisions in law enforcement agencies. The people of this country expect the decisions of law enforcement to be free from politics, and severely chastise anybody who tries to bring politics into those types of law enforcement decisions. But the Waco operation had a result that none of us desire, and that was the deaths of all of the people who were inside the compound a week ago last Monday.

Thus, it is legitimate for this committee in discharging its oversight functions over law enforcement to ask what went wrong, how we can learn from the mistakes that were made in the Waco operation, and to prevent that from happening again.

I think that the principal focus of this committee's activity should be to look into the chain of command, what types of options were presented by whom, who reviewed those options, and who eventually signed off on those options before April 19.

In conclusion, I would like to state my personal admiration for the activities and brave behavior of both the FBI and ATF agents who were on the scene in Waco, and again express my personal condolences to the families of those ATF agents who passed away at the time of the first assault.

I also think it is important that everybody realizes that no one on this committee holds anyone but David Koresh responsible for the tragic deaths of those who died within that compound. He was the one that brought them there, he was the one that kept them there, and he was the one that led them to their deaths in the fire that occurred at the time the FBI stormed the compound a week ago Monday. Anybody who seriously says that the FBI or law enforcement was at fault really didn't know what was happening down there or cared not to listen.

So I would hope that we could get into the business of overseeing the FBI and the Justice Department and the ATF here so that all of us can learn from this very tragic activity, and so that the word can go out to anybody who is contemplating holding innocent people hostages as Mr. Koresh did that law enforcement will be able to get to them and hopefully have a result that will bring those who are guilty of committing crimes to justice in a court of law rather than the tragic outcome that occurred in Waco.

Mr. BROOKS. Thank you very much.

I would at this point want to recognize the presence of Congressman Chet Edwards of Texas, whose district was the location of the Branch Davidian compound. Without objection a statement from the Congressman regarding the subject matter of these hearings will be entered into the record at this point.

Thank you very much, Congressman Edwards.

[Mr. Chet Edwards's prepared statement follows:]

PREPARED STATEMENT OF HON. CHET EDWARDS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF TEXAS

I want to commend Chairman Brooks and the members of the Judiciary Committee for convening this hearing on the tragic events in my District. On April 19th, the nation witnessed an immense human tragedy in my District near Waco, Texas. The nation now deserves and expects answers to many questions I hope will be answered today.

I doubt if anyone can adequately put into words the emotion of watching over 80 men, women and children perish April 19th in a cruel and brutal fire apparently set by the Branch Davidians.

The loss of life at anytime is tragic. The loss of small, innocent children because they were pawns in David Koresh's delusions was senseless tragedy at its worst.

My plea to the committee and to the officials of the Justice Department, the FBI and the Bureau of Alcohol, Tobacco and Firearms is this: Let us be more committed to saving lives in the future than in pointing blame at the past, or avoiding responsibility in the present.

Before the ashes even cooled at Mount Carmel, some blamed Waco, the FBI, the ATF, the Attorney General and even the President. Monday morning quarterbacks

and instant experts have already drawn conclusions of blame before the facts are even gathered.

Let us be guided by genuine interest in finding the facts rather than by sound bites, sensationalism and politics. Nothing could be more sickening than for anyone to seek political gain from the loss of human life.

I think it is appropriate for Congress and this committee to review the actions of the ATF and the FBI. In doing so, I hope we ask this: were the process and decisions reasonable at the time, not were they perfect in 20/20 hindsight.

If unreasonable mistakes were made, let there be accountability as well as lessons learned, but let us also not forget the sacrifice and heroism of many federal, state, county and local law enforcement officials. *Nobody, nobody* cared more about a peaceful solution to this siege than the agents whose lives were on the line for 51 days.

Finally, I would hope that we can find a means, within or outside of government, to thoroughly examine this event and to question how we can save lives in similar situations in the future. We may not find an answer, but we must try in a bi-partisan, non-political forum. We cannot bring back the lives already lost, but perhaps by dealing responsibly with this tragedy, we can save many lives in the future.

Mr. FISH. Mr. Chairman, I understand that Members such as Mr. Moorhead will be—any Members who have statements at this point—

Mr. BROOKS. All Members who have statements may enter them into the record at this point, and the record will be held open for a few days in case Members need some time to perfect their statements.

[The prepared statements follow:]

PREPARED STATEMENT OF HON. ROMANO L. MAZZOLI, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF KENTUCKY

Mr. Chairman, thank you for holding this hearing so soon after the tragic events of April 19.

The incident in Waco is certainly of immense interest to my constituents and to Americans across the country. I am sure that what we hear today from Attorney General Reno, Director Sessions of the Federal Bureau of Investigation (FBI), and Director Higgins of the Bureau of Alcohol, Tobacco, and Firearms (ATF) will detail the government's strategy toward the Branch Davidians and the training techniques and skills employed by the federal agents and employees assigned to the compound near Waco.

Things went terribly wrong on the first day of the action, February 28, and they went terribly wrong on the final day of the standoff, April 19, when the horrible inferno we all saw on television consumed the compound and the more than 70 people then in it.

Let me begin by saying, we all grieve for the families, friends, and colleagues of the four ATF agents who were killed and the 16 who were wounded on February 28th. And, we grieve for the families of the Branch Davidians themselves, and particularly for the innocent children who died. The deaths of all these people are a terrible loss.

I applaud the forthrightness of Attorney General Reno in her public statements about this affair leading up to today's appearance, and I commend her for taking responsibility for what happened on April 19.

In my view, David Koresh holds the ultimate responsibility for the deaths of all those who died—both law enforcement officials and cult members—in the course of this 51-day ordeal.

I laud the heroism of the agents of ATF, the FBI, the Waco area law enforcement and fire departments, and all the associated agencies and emergency departments who performed under extremely adverse conditions during these seven weeks. We are grateful to these people who operated in extremely difficult and dangerous circumstances. Their valor, dedication, and heroism are a matter of record and a source of national pride.

I believe that Congress must examine everything concerning the events in Waco not only to determine where mistakes were made and what went wrong, but also to look to the future to prevent their recurrence. This means determining whether the FBI needs more Hostage Rescue Teams rather than the one team it currently has. It means determining whether the future use of CS Gas is warranted in this type of hostage situation. It means determining whether having fire equipment on

the scene, or having airborne fire equipment available, should be standard operating procedure in similar situations.

These are the types of issues that need to be addressed. So, I look forward to the testimony of our witnesses, to answering the many lingering questions about the operation, and to learning how we can prevent and prepare for incidents like this in the future.

PREPARED STATEMENT OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. Chairman, the entire country now knows about the terrible events that occurred a week ago Monday in Waco, Texas. The fiery end to the 51-day siege of the Branch Davidian compound was a shockingly brutal example of the best laid plans gone awry. Unfortunately, failed plans were endemic to the government's actions against David Koresh and Ranch Apocalypse. The abortive February 28th raid that resulted in lamentable deaths of four Bureau of Alcohol, Tobacco and Firearms agents is additional proof, if any is needed, of the tragic consequences that result when strategies fail.

Our job today, is not to point fingers or to find scapegoats for the government's ill-fated stratagems in Waco. I'm not interested in the Washington blame game—it's counterproductive and it doesn't get to the real issue at hand—which is how do we prevent this from ever happening again? To answer this question I think we have to do three things.

First, we have to get a straight, factual accounting of what really happened in Waco. I know that the witnesses here today and experts from around the country are hard at work gathering as much information on this question as possible and I look forward to their findings and reports. Second, I think we have to minutely examine the decision-making process that preceded each unsuccessful set of plans. Did the decision makers have access to all relevant information? Were all the risks properly accounted for? Is the decision-making apparatus in place adequate to deal with decisions of this nature? Were all of the relevant alternatives considered? These are questions that need to be answered quickly because the same decision-making system could be tested in a new crisis that unfolds tomorrow. Finally, are there any structural or statutory changes that Congress needs to consider? It's clear as the evidence emerges that Koresh and his followers were able to amass a large arsenal of fully automatic firearms while generally complying with the federal gun laws. It is also evident that there may have been instances of child abuse that went unpunished.

Mr. Chairman, if we are to gain anything from this terrible tragedy, it is insight into the future and if we learn from our mistakes, we're less likely to repeat them.

PREPARED STATEMENT OF HON. GEORGE E. SANGMEISTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman. I would like to thank you for holding this hearing on the recent events in Waco, TX and congratulate you on putting today's meeting together promptly. I believe one of our most important duties in Congress is to oversee the work of all Federal agencies to be certain they are doing the job the American people expect of them. As a member of the Judiciary committee I take very seriously our duty to ensure that the Bureau of Alcohol, Tobacco and Firearms (ATF) and the Federal Bureau of Investigation (FBI) acted properly and legally throughout their dealings with David Koresh and the Branch Davidians.

I would like to start by expressing my sincere condolences to the ATF for the loss of four agents, and also to the friends and families of those men. It is clear to me, in the great wisdom granted by hindsight, that both the ATF and the FBI were forced into no-win situations. While we all wish the outcome would have been different, I am afraid that may not have been possible. Cult leader David Koresh appears to have believed this confrontation was inevitable and, in my opinion, did all he could to insure it was as dramatic and deadly as could be. Perhaps his only disappointment in the outcome of the stand-off is that he did not take more agents with him.

The ATF should be commended for the good investigative work that led to obtaining the search warrant for the cult compound. The newspaper reports coming out of Waco each day only confirm that the illegal destructive devices the ATF sought were present. As we all know, the attempt to exercise this warrant on February 28 ended in disaster. However, I want to make it clear, because I have heard from peo-

ple who seem to have forgotten this, these were Federal agents executing a legal search warrant when they were greeted by an estimated 10,000 rounds of weapons fire. No matter what your views on gun control or whether or not Americans should have the right to stockpile automatic weapons and handgrenades, you absolutely must not allow yourself to think the cult members were victims. These were Federal agents, the "good-guys," executing a search warrant to enforce the laws of this great country. Firing on them was unconscionable.

I also want to commend the FBI and its Hostage Rescue Team for its work in the 50 days following the initial gunfight at the compound. The patience shown by the negotiators when dealing with the rantings of Mr. Koresh and his unwillingness to keep his end of the bargain even when agreeing to his own terms is admirable. At some point, when negotiations are going nowhere, it becomes necessary to take more concrete action. On April 19, the FBI, following consultation with the military and a thorough briefing of the Attorney General, took such an action. For the second time, the outcome was not what the planners envisioned. Once again Mr. Koresh took matters into his own hands and burned the compound, along with a still unconfirmed number of his followers, to the ground.

I am sure everyone in this room would like a chance to do all of this over. We would especially like a chance to save the lives of four ATF agents and all of the children who died to fulfill Mr. Koresh's apocalyptic fantasy. Many of us are probably thinking "I would have done it differently," but it was not our job to do. I want to thank the ATF and the FBI, along with the local law enforcement agencies involved, and the military leaders who provided equipment and expertise, for their efforts on behalf of the innocent victims of Mr. Koresh. Now, I only hope this tragic incident provides useful lessons for those of you who may face a similar situation in the future. More importantly, and perhaps far too optimistically, I hope those lessons need never be applied.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. XAVIER BECERRA, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Thank you, Chairman Brooks.

I'd like to first welcome our distinguished guests, Attorney General Reno, BATF Director Higgins and FBI Director Sessions for being here with us today. I am pleased that you have made yourselves available for questions.

The situation we are here to discuss is one that ultimately brings sadness to our hearts. The memory of those who were sacrificed by David Koresh will linger in our minds eternally.

We now have before us the opportunity to use what we have learned, and will continue to learn, to better analyze the unique power of one individual over masses of people.

We need to be asking ourselves questions about the mindset of Koresh and his followers. We should be discussing the federal government's role in evaluating situations like this one. And finally, we should be preparing ourselves, with the knowledge of the past, for the difficult decisions that lay ahead of us.

All of the details surrounding the actions of the BATF, the FBI and the Department of Justice should be thoroughly reviewed.

The purpose of such investigations must be to prepare alternatives for the future. It is not individual or collective actions in this incident that I am most concerned about.

Again, I would like to thank Chairman Brooks for holding this hearing and Attorney General Reno, Director Higgins and Director Sessions for appearing here today.

Thank you.

PREPARED STATEMENT OF HON. CARLOS J. MOORHEAD, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA

Exactly 2 months ago today, one of the most unprecedented law enforcement assaults took place at a compound located on approximately 70-80 acres of land near Waco, Texas. This initial ATF raid led to the Branch Davidian Cult Standoff for 51 days and ultimately to the apparent deaths of at least 80 cult members in the tragic fire last week.

While I do not agree with the lifestyle and religious teaching of David Koresh and his followers, I am troubled by the law enforcement procedures that led up to the assault on his compound. This operation involved 100 specially trained agents, 3

helicopters and scores of technical support. ATF agents received a heavy barrage of gunfire and exploding grenades, killing 4 and wounding 16. These brave men died in the line of duty. This is a tremendous loss to their families and to our country.

We must try to resolve the many unanswered questions surrounding this tragic event. We know that back in 1987, Koresh took over this compound after a gun battle with other cult members. We know that David Koresh continually predicted a confrontation with law enforcement officials and repeatedly instructed his followers that should this occur, they were to be ready to fight. We know that David Koresh was made aware of the raid and was prepared to confront ATF agents. Evidence has confirmed that he spent approximately \$200,000 on the acquisition of various firearms, ammunition, machine gun conversion parts, handgrenades, grenade launchers, and various chemicals which, when assembled, would be classified under federal law as destructive devices. It has been alleged that he knew about the undercover agent. We know that someone from inside the compound called "911" during the shootout to request help. We know that innocent children have been brainwashed and abused. What we must determine is if our law enforcement agencies acted appropriately with the necessary resources. I look forward to receiving the testimony of our witnesses before us today.

PREPARED STATEMENT OF HON. JIM RAMSTEAD, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MINNESOTA

Thank you, Mr. Chairman, for holding this important hearing today.

As we all know, both the tactical plan executed by the Bureau of Alcohol, Tobacco and Firearms (ATF) on February 28 and the FBI's effort to end the standoff on April 19 resulted in substantial loss of life.

Our purpose here is not to assign blame but rather to elicit all the facts surrounding the tragedies in Waco.

I'm sure our three witnesses—Attorney General Reno, Director Sessions and Director Higgins—are as saddened as we all are by the deaths of the 4 ATF agents and the 24 children in the compound.

In reviewing the evidence, I am especially concerned and deeply troubled about several issues:

- 1) What evidence did law enforcement have regarding sexual and other physical abuse of the 24 children by Mr. Koresh?

- 2) Was the fatigue of the FBI's Hostage Rescue Team a valid justification for the April 19th action? Why does the FBI have just one Hostage Rescue Team?

- 3) Is it true that the ATF proceeded with the February 28th action despite indications that Koresh knew about it in advance—and through an ATF leak to the media?

- 4) Were ATF agents refused clearance to use fully automatic weapons, even though their request was based on knowledge of automatic weapons and explosive materials possessed by the Branch Davidians?

Mr. Chairman, these issues are very disturbing. We must not compound the tragedies by failing to learn from the mistakes which were made. That is why this oversight hearing and the internal law enforcement investigations are necessary.

I commend you for your leadership in holding this important hearing.

PREPARED STATEMENT OF HON. ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased that you have scheduled these hearings. While we do not need Congress to act as a Monday morning quarterback second-guessing every move made by federal authorities, we do need to find out exactly what happened that led to the fiery tragedy that engulfed the Branch Davidian compound. It is my own opinion, based upon what I have seen, heard and read, that the personnel of the Bureau of Alcohol, Tobacco and Firearms and Federal Bureau of Investigation should be commended for what appears to be their brave efforts, rather than be criticized for an inevitable disaster brought about at the hands of David Koresh and the doomsday psychology of his cult followers.

To this end, I look forward to the testimony of Attorney General Reno and representatives of the BATF and FBI which I hope will give us answers to our many questions about what happened in Waco and provide us with guidelines for better handling of future incidents of violence involving radical cults and armed terrorists.

I note that David Koresh is reported to have had with him in that compound a number of illegal aliens who somehow entered this country from Australia, Great

Britain and other places in order to join their messiah. I would like to know how these people got here and managed to remain without apprehension.

In this regard, I take note of the fact that, as of this late date, some 100 days into this administration, there is still no Commissioner in charge of the Immigration and Naturalization Service. I join Subcommittee Chairman Mazzoli and others in urging the Attorney General and the President to name a new INS Commissioner as soon as possible. The illegal immigration crisis facing California and other parts of America demands prompt action on that front.

PREPARED STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for holding today's hearing. I want to thank our witnesses for appearing before the Committee to help us understand the chain of events which led up to the tragic results on the morning of April 19. I would like to commend the agents, both FBI and BATF, who heroically sacrificed their lives in the line of duty, and want the families of the four ATF agents who lost their lives to know we are all truly sorry for their loss.

From the outset, it needs to be made very clear that the purpose of today's hearing is not to assign blame to any one individual. The only person who bears the responsibility for the deaths of the families and children who perished in the fiery inferno of the Waco compound is David Koresh.

However, I believe we must carefully study every aspect of the Waco standoff with one overriding goal in mind: to make sure that if there ever is a next time, it will be handled better.

Several key questions must be answered. First, how did David Koresh know that the ATF raid was coming? As officers moved in between 6,000 to 10,000 rounds were fired at them. Clearly, Koresh was ready and waiting.

There is evidence indicating that the ATF may have informed the media about the impending raid apparently in hopes of generating publicity about the ATF in action. Inadvertently, and in the course of doing their jobs, journalists may have tipped off Koresh. I'm sure that all of us today are interested in hearing the ATF policy regarding notification of the media prior to raids. It is my understanding that there is evidence that in past operations, the media have been informed about ATF raids before they occurred. I would like to know why this policy is followed, creating unnecessary risk when federal agents' lives are on the line.

Second, it seems clear that Federal law enforcement agencies simply did not coordinate their efforts. I would like to know whether bringing in the FBI to pick up what started out as a BATF mission created complications that made it more difficult for the agencies.

Finally, everything that happened—the failed raid resulting in the agents' deaths, the fifty-one day siege, the millions of dollars spent, the tying down of four hundred FBI agents a day keeping them from other missions, and most tragically of all the loss of twenty-four innocent children—resulted from several crucial decisions which must be scrutinized.

There is evidence that senior ATF officials may have known that Koresh knew in advance about the impending raid. Surprise was absolutely necessary for the raid to be successful and to provide for maximum safety for the agents.

With the element of surprise lost, Koresh was able to place two or three automatic weapons at each window. As these brave ATF agents moved across the open field and roof of the Compound, they were easy targets for Koresh's waiting shooters.

Why? Why would senior ATF officials push forward with a raid depending on complete surprise when they very well may have known that surprise had been lost? These are the pieces of the puzzle that I hope Attorney General Reno, Director Sessions and Director Higgins will help us put together today.

There are those who say we should not investigate the Waco incident—that it is time and money wasted. They say we should simply put this tragic chapter behind us. I disagree.

As difficult as it may be, we must answer these, and other, tough questions. Not to lay blame or point fingers, but to make sure we get it right next time.

We owe it to the memory of the agents killed and wounded in the initial assault, to the innocent children whose lives ended prematurely and those in the future who may face similar situations. I look forward to the testimony.

Mr. BROOKS. I am delighted to welcome Attorney General Janet Reno to the committee for her first appearance before us since being sworn in.

Most of us are familiar with her background as a result of her confirmation hearings. However, for those who are not, I will just tell you a little bit about her.

From 1978 until the time of her appointment as Attorney General, Ms. Reno was a State attorney in Miami, FL. She has been a partner in a Miami-based law firm, an assistant State attorney, staff director of the Florida House of Representatives Judiciary Committee. She comes from good Florida stock, feeling every bit at home with alligators as with the more dangerous predators she has encountered on this side of the Potomac.

And, Madam Attorney General, while we regret the sad events that necessitated this hearing, we welcome you. We look forward to your testimony. You may proceed as you see fit.

STATEMENT OF HON. JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, DEPARTMENT OF JUSTICE

Ms. RENO. Thank you very much, Mr. Chairman.

Can everybody hear me? I truly appreciate this opportunity to appear before you to discuss the tragic events at the compound in Waco, TX, this past week.

I want to be as open as possible with you and with all the American people about what we knew before; what we knew on that day; and what we know now and as our investigation proceeds. I want to be responsible and accountable to the Congress and to the American people in every way I possibly can.

This is one of the hardest decisions that anybody could ever be asked to make. We deliberated long and carefully before reaching a decision. Nothing we do now can change the suffering felt by the families of the ATF agents or the families of those who perished in the compound; but as you have pointed out so eloquently, we must do everything we can to learn from these events about what we can do in the future to prevent people like David Koresh, or people motivated by other thoughts from causing such a senseless, horrible loss of human life.

On February 28, 1993, 4 agents of the Bureau of Alcohol, Tobacco and Firearms were killed and 16 were injured in a shootout that occurred when they attempted to execute an arrest warrant for Vernon Howell, also known as David Koresh, and a search warrant at the Branch Davidian compound near Waco, TX. The agents were met by a barrage of gunfire from numerous firing points in the compound that lasted 45 minutes, involved thousands of rounds of ammunition, and left the agents dead and injured.

Weapons used by the Branch Davidians included .50-caliber rifles having an effective range of 3,000 yards, a distance from the Capitol to the White House. All of those killed or wounded were shot or injured by homemade handgrenades. While several members of the commune were killed and injured, there was apparently no serious injury to any of the children.

After the shootout, the remaining ATF agents established a protective perimeter around the compound. A few hours later, three Branch Davidians attempted to enter the compound, resulting in a

second shootout with ATF agents in which one Davidian was killed. Attempts were made to further secure the perimeter. ATF officials then requested that the FBI dispatch its Hostage Rescue Team, which we refer to as HRT.

On February 28, 1993, agents of the Federal Bureau of Investigation, including the HRT, arrived on the scene. The FBI found an armed fortress compound consisting of approximately 70 acres located on Route 7 near Waco.

I took office on March 12, 1993. After my FBI clearance, I had been briefed previously by the Acting Attorney General and was thereafter briefed specifically on the situation at Waco.

I was advised that the primary goal of the FBI's Hostage Rescue Team was to negotiate with Koresh to secure the release of the children and the surrender and prosecution of all those who participated in the murder and assault of the Federal agents without further violence or injury to anyone concerned. I concurred that we must try to negotiate to avoid further bloodshed to the extent that we could.

As this situation evolved, the FBI had consistently rejected a direct assault on the compound because of the danger of heavy casualties to the agents and to the children and because of the layout which prevented a surprise assault. I was told, as I was briefed, that the FBI had a trained negotiator on the scene and that they had, and during the course of these deliberations, continued to consult with behavioral experts and others who had knowledge of the cult to determine how best to proceed to negotiate with Koresh.

From the start, the negotiation tactics focused on restricting the activities of those inside the compound and of depriving them of a comfortable environment so as to bring the matter to a conclusion without further violence.

Those inside the compound were advised of the FBI's rules of engagement. Under those rules, the agents conveyed the information that they would not use deadly force against any person except when necessary in self-defense or defense of another, or when they had reason to believe that they or another were in danger of death or grievous bodily harm.

The FBI installed lights to illuminate the compound at night and loudspeakers to ensure they could communicate with all members of the compound at once rather than to rely solely on a single telephone line available to speak to Koresh and those he permitted to talk on the phone. They also used loudspeakers to disrupt their sleep. They cut off their electricity and they sought to restrict communications of those within the compound just to the hostage negotiators.

Additionally, they sent in letters from family members and made other good-faith efforts designed to encourage surrender by those who wished to leave the compound. In particular—and I asked about this during the course of our deliberations—they made repeated efforts to secure the release of the children.

In further efforts to encourage the negotiating process, attorneys representing Koresh and Steve Schneider were allowed to enter the compound or communicate by telephone with them on several occasions. Throughout this 51-day process, Koresh continued to assert that he and others inside would at some point surrender. However,

the FBI advised that at no point did he keep his word on any of his promises.

Despite all efforts, the negotiators concluded that negotiations were at a standstill and that they had not been able to negotiate a single item with Koresh. Although 21 children and 14 adults had been allowed to leave the compound between February 28 and March 23, 1993, those persons who left the compound did so because Koresh affirmatively wanted them out as they were not fully committed to his cause; they were a drain on his efforts in internal discipline and resources; or he viewed them as potential spokespersons to the media.

During the week of April 5, the FBI advised me that they were developing a plan for the possible use of tear gas in an effort to increase the pressure on those in the compound to surrender. Thereafter, I had a series of meetings with the FBI to discuss the emerging proposal.

The threshold question I asked was whether the gas would cause permanent injury to the children. I did not even want to consider the matter further if we could not be certain about this factor. The FBI assured me that the gas would not cause permanent injury.

I asked them to research further, and subsequently, they arranged for me to meet with Dr. Harry Salem, a top expert in toxicology, who is chief of the Life Sciences Department at the Edgewood Arsenal. He reviewed with me case studies which confirmed that it would not cause permanent injury.

Then the primary question I asked again and again during the ensuing discussion was: "Why now? Why not wait?" I asked about their food and water supply and was told that it could last at least a year or more. I asked that the information about the water supply be checked and doublechecked by observing the level in the water tanks. We explored but could not develop a feasible method for cutting off their water supply.

I asked my staff to have direct personal discussions by phone with the chief negotiator on the scene to satisfy ourselves that we had, indeed, reached an impasse in discussions and in negotiations. After a 2½-hour conversation, that seemed clear. I became convinced that short of allowing David Koresh to go free, he was not coming out voluntarily.

Given that unacceptable result, in light of the fact that he was such a dangerous criminal, allowing the status quo to remain was not going to lead to an ultimate peaceful resolution and eliminate any risk to the safety of the innocent children in the compound, the public at large or the Government agents at the scene. On the contrary, the passage of time only increased the likelihood of incidents and possible injuries and attendant injuries and harm.

But we continued to deliberate; and in the course of our deliberations, we met with Gen. Peter Schoomacher and Col. Jerry Boyntkin, former and present commanders of Delta Force, respectively, the Army's equivalent to the FBI's HRT, to review the plan. Their comments were instructive.

While indicating that the plan appeared to be sound, one suggestion was that rather than an incremental approach for the use of the gas as proposed by the FBI, gas should be inserted into all portions of the compound simultaneously. I preferred the FBI ap-

proach which called for a gradual increase in pressure over time. It seemed to me that that would be best to ensure the safety of those inside.

I directed that if at any point Koresh or his followers threatened to harm the children, the FBI should cease the action immediately. Likewise, if it appeared that as a result of the initial use of tear gas, Koresh was prepared to negotiate in good faith for his ultimate surrender, the FBI was to cease operation.

On the other hand, if Koresh and his followers endangered the agents by firing upon them, they were authorized to return the fire. To the great credit of the FBI, they received substantial fire from within the compound, both at the vehicles and at sniper positions surrounding the compound, without returning any fire. In fact, throughout the 51-day seige, the FBI never fired a single shot. Instead, when fired upon, the FBI responded by beginning to insert gas throughout the compound, consistent with what the Delta Force commanders had suggested.

The commanders also expressed concern about the length of time the HRT had been on the scene and in the state of constant readiness, and all expressed the view that the team would have to be pulled back for retraining very quickly if they were going to come back to the scene. All advised that there was not a substitute civil force that could secure the extensive area around the compound that had the expertise of the Hostage Rescue Team.

We continued deliberations. I wanted, and received, assurances that the gas and its means of use were not pyrotechnic. I was concerned about intentional or accidental explosions and ordered that additional resources be provided to ensure that there was an adequate emergency response if we should go forward.

I also considered that Koresh had talked about suicide, and that might occur at any time under conditions that the FBI might be less likely to control. Experts, however, advised the Bureau that the chances of suicide were not likely; but I again emphasized that it was something that was considered, something that was considered that might happen at any point along the way regardless of what the FBI did.

In considering the FBI proposal, I weighed the many concerns of the Government with respect to the state of affairs inside the compound. They included: First, the well-being of the children in the compound, given the deteriorating sanitary conditions, the apparent lack of adequate medical care inside and reports of sexual and other abuse in the past.

Second, the vulnerability of the outer perimeter, which created a threat to public safety and the Federal agents at the perimeter. The outer perimeter was vulnerable because there were inside the compound .50-caliber weapons having an effective killing range of 3,000 yards, a distance that would reach from the U.S. Capitol to the White House.

Third, our inability to maintain the presence of the HRT onsite indefinitely, and the advice I received that there was a lack of a suitable substitute force that could replace them at the compound and ensure the security of all involved.

Fourth, the increasing risk, as the standoff continued, of injury to Federal agents whether by accident or by the risk of shooting from the inside.

Since being sworn in as Attorney General, I have had numerous conversations with people both inside and outside the Department of Justice concerning the Waco situation. In addition, I directed my staff to keep the White House apprised of ongoing developments. My discussions with representatives of the White House were predicated on the premise that as chief law enforcement officer, the decision on how to proceed was mine.

I advised the President on the Sunday before the operation of my decision to authorize the FBI's use of tear gas at the compound, and he said he would support my decision.

I believed that we were dealing with a situation that would not resolve itself by mere acquiescence to the standoff. Negotiations had proven to be fruitless; and despite our best efforts, we could not secure the release of the children.

It was a situation that suggested to me that time would only increase the risk to public safety, to the safety of Government agents and to those within the compound, without any realistic expectation that the matter would be resolved peacefully if we did nothing. It was my call, and I made it the best way I know how.

Let me urge that we focus on the future to try to determine how we can best avoid a recurrence of this tragedy. In this regard, at the President's request, we and the Department of Treasury are looking at a process whereby the events at Waco will be examined by experts both within and outside the Government to consider the following questions: One, in the execution of the arrest and search warrants by ATF, were established procedures followed and, if so, were they adequate?

Two, is Federal law enforcement adequately prepared to negotiate in dangerous situations in terms of training, staffing, and available techniques?

Three, is training for the execution of warrants involving barricaded suspects who may be holding innocent third parties adequate for all law enforcement agencies?

Four, are improvements needed in coordinating the activities of the various investigative agencies?

Five, how should Federal law enforcement agencies marshal resources in various disciplines, including psychology and psychiatry, in situations involving cults and other groups using barricades and holding innocent people?

Six, what systems and understandings about command and control should guide the relationships among leaders of the departments and career officials in operating the units when field operations impose a substantial risk of danger to law enforcement officials and others?

The incident at Waco ended tragically for all involved. I have thought every day since April 19 about what I might have done differently. I only hope that we can work together to make sure that I never have to make such a decision again.

I would be glad to answer any of your questions.

Mr. BROOKS. Ms. Reno, the major focus of today's hearing is the decisionmaking process at the highest levels of the law enforcement

community which led to the actions involving the Branch Davidian cult.

Could you describe for the committee the major considerations you personally brought to bear in approving the actions leading up to and including the April 19 operation?

Ms. RENO. The prime concern that I had is the question I kept asking over and over again, Mr. Chairman: Why now; why not wait? I reviewed statements that he had made about apocalypse at any time. He could have done this at any time.

The FBI advised me that they were in better control considering the state of readiness of their HRT team, so that was a definite factor.

I reviewed—it was important—we spent a lot of time determining the water supply. I thought that might be a way, if the water supply were reduced, that we might be able to force them out. And, again and again, we went back through trying to observe the level of water in the tanks to see whether it might be possible to wait them out in that fashion.

It appeared from everything we were told, based on our discussion with the negotiator on the scene who advised that negotiations had reached an impasse, that he was going to stay there and would not come out voluntarily. It was going to be an indefinite stay that would expose the lives of agents on the perimeter to danger and would threaten the continued safety of all inside.

I continued to be concerned about the children. There was no sanitary facility for them. They were dumping their waste. The conditions were increasing in that regard. We had had reports; and, as I have pointed out, until you see the children you cannot confirm the reports one way or the other about the abuse of the children. The concern I had was that to let this go on indefinitely where you had dangerous offenders who had killed 4 agents and injured 15 others was something that could best be resolved by increasing the pressure, not to make this D-Day, but to try to increase the pressure by the use of gas, which I had determined after very careful review would not be permanently harmful to the children, by tear-gassing the compound, that would be the best way to proceed to increase the pressure to try to force them out.

Mr. BROOKS. Ms. Reno, questions have been raised about the extent to which the White House was involved in the decisionmaking process relative to the events in Waco.

Could you describe the extent and the nature of your contact with the White House during the standoff, particularly during the days preceding April 19?

Ms. RENO. I kept the White House advised through the White House Counsel's Office during the course of my deliberations after the FBI had made its proposal about the use of gas.

There were continued discussions as we developed new information on Sunday prior to April 19. I talked with the President and advised him of what we proposed to do. He gave me his full support.

Mr. BROOKS. Would you describe in detail how you kept in touch with the situation in Waco and the individuals with whom you consulted in formulating and approving the actions against the Branch Davidian compound?

Ms. RENO. The first conversation I had concerning the possible use of tear gas at the compound was with Director Sessions, who said that during the week of April 5, that he would like to arrange some time to brief me on a proposal that they would like to present.

I met with Director Sessions and other representatives of the Department, including Floyd Clarke, Larry Potts, Doug Gow. There may have been others, but those are the people that I specifically remember. I was briefed in all details about everything that had been done up to that point in trying to resolve the matter peacefully. We went through it in detail.

Then I started asking the questions. What about the gas? Would it be harmful to the children? Go back and do some more study. I had real concern about that. It was pointed out to me after they had had the doctor brief me that the gas was nonlethal, it was tear gas as we understand tear gas, and that members of the U.S. Army are gassed as part of preparation. So I became comfortable with that, but I was still not comfortable with the primary question of: Why now; why not wait?

We had explored other possible alternatives. As I suggested to you, the FBI, before I had been sworn in, and then I concurred totally with them, rejected any direct assault on the compound as being far too dangerous for the agents and for those inside the compound.

We asked to meet with military officials. The general who was the former commander of Delta Force and the colonel presently commanding the Delta Force came to Washington and met with us and FBI officials after they reviewed the plan, and we consulted very carefully about that.

One of the points raised for the first time by the Delta Force commander and previous commander was that the HRT had to be at a constant state of readiness and that to keep them on a scene for the length of time that these agents had been on the scene began to raise questions that they could not remain there much longer and still be in the state of readiness which should be expected of an HRT team.

I asked, "Well, isn't there another team," and was advised no, except for the Delta Force, and then I believe the Navy has a force for marine disasters. We explored the provisions of posse comitatus and became convinced that you could not use the Delta Force in a civil situation.

I asked at that time, Well, can't you send in SWAT teams or something like that? I am not a law enforcement expert, but I was asking every question I knew to ask, and they explained and went step by step through the training that the HRT team has in terms of sniper firing and their ability to maintain security. So I became convinced that if we had to pull back the HRT team and substitute somebody else, we couldn't begin to provide the security for all of those concerned that we would with the HRT.

I continued to be concerned about the water tank because I heard some information that indicated their water supply might be low. We went back in. With the ability of the FBI to determine the level of the water tank from a distance, we were advised that it

continued to be replenished and that it looked as if they had enough supplies and water to last for over a year.

What concerned me was the fact that even with the HRT team, it was going to be difficult to control a perimeter. If you can imagine having to control a perimeter that extended from here to the White House and the same distance either way, it could be a very difficult situation. People had been able to get in there and people could come out. There could be confrontations.

We reviewed—because I directly considered the fact that people had talked about the possibility of a mass suicide, and you remember the situation with respect to Jonestown—that is something I considered. The FBI advised me that its behavioral experts had indicated—and, by the way, Mr. Chairman, I have asked the FBI, because I want to be as candid as I possibly can, to interrupt me if I say anything that is inaccurate in any way, and I would ask that because I want to make sure that I lay out the clearest picture possible for you in terms of any advice that they gave me.

But we looked at it, they advised me again that their experts had concluded that the chances of a mass suicide were not likely; but if they were, they could happen at any time; and if we let the standoff go on forever, they could—it could happen if you got some rambunctious group in there that wanted to square off against the Davidians, it could happen in any number of ways.

I went step by step again through the decisions, weighing it back and forth, and reached a conclusion that the gas was not lethal, that it would not permanently harm them. By everybody's description, it would be so they could last with gas masks for sometime, but it would become so uncomfortable that they would come out.

I think as a footnote to this, one of the things we didn't count on was that when—and I think one of the things that we will have to review and look at and understand is, why the gas didn't cause more discomfort immediately.

But those were the factors that led to my decision, and constantly during this time I was consulting and trying to be available at their request to the Director, to Mr. Clarke, Mr. Potts, and Mr. Gow.

Mr. BROOKS. Thank you very much.

In accordance with the rules of the committee, I want to note that while I have asked only three questions, we want to adhere strictly to the 5-minute limit because I want all of the Members to have an opportunity to make their positions clear.

Mr. Fish, the gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

Attorney General Reno, I commend you for your frankness.

I would like at the outset to take a step back and ask you a threshold question. What was the reason or perhaps reasons that Federal law enforcement personnel were there at the compound in the first place? Was there a serious enough threat posed by the Branch Davidians to justify the BATF raid, and following that, the 52-day stakeout as well as the FBI action on April 19?

Ms. RENO. Congressman, I have focused my attention on Department of Justice activities and on the FBI, and I would refer matters that preceded February 28 to the investigation that will be

conducted. I have not reviewed that in terms of making any informed comment on what led up to it.

What I did satisfy myself was that 4 agents had been killed; 15 had been wounded by very dangerous people, and that the FBI had been called in. When I accepted, when I took office, that was the situation that I was faced with, and I made a judgment based on all the information that I had that they were indeed dangerous offenders who had knowingly killed Federal agents. But at that point, with the tragedy of the agents' death, 15 wounded, the issues with respect to the seige, I did not want to be in the process of second-guessing somebody else.

Mr. FISH. Thank you.

General Reno——

Mr. BROOKS. Will the gentleman yield?

Mr. FISH. Of course.

Mr. BROOKS. I would ask the members of the public in the audience to please rotate. That is, leave the committee room after 20 minutes because there are 150 or more people outside patiently waiting to come in for a while. If you would stay 20 minutes and rotate out, it would give others an opportunity to participate in this public hearing.

Pardon me, Mr. Fish.

Mr. FISH. Thank you.

General Reno, you have demonstrated both personal courage and professionalism in your willingness to take responsibility for the decisions that led to the events of April 19, but while you are ready to take public responsibility, it does not mean that you actually made the decisions.

As to the tactics, whose idea was it to use the tear gas and the tanks? Who actually made the decision to move in that manner and on that particular day?

Ms. RENO. The FBI made the decision to bring in the tanks, and the tanks were on the scene as I recall when I was sworn in on March 12, 1993. So CEV's as they were called which were, I believe, combat engineer vehicles, and Bradley vehicles, and as I recall, a tank were already on the scene.

The proposal that was made to me was made by the FBI to use tear gas, inserted in order to protect those involved and to protect the agents involved from the weapons that were inside the compound, that it would be inserted with what I came to refer to as a CEV, which is a tank-like vehicle with a boom on the front of the tank.

Mr. FISH. Attorney General, the April 25 issue of the Washington Post outlook section, Richard Restak, R-e-s-t-a-k, a neurologist and neuropsychiatrist, and author of eight books on brain behavior, had this to say:

Unfortunately, in dealing with psychotics, negotiations may take weeks or months, but not waiting is extremely dangerous. Psychotics respond very erratically under pressure. Indeed, if a person could deal effectively with stress, he would not have descended into psychosis in the first place.

Unfortunately, those making the decisions about what to do about Koresh unwittingly set up situations from the beginning that could almost be guaranteed to further his dissent into madness. Even a well-adjusted person could decompensate, as doctors say, under the pressures of psychological-warfare techniques like aiming high-intensity floodlights at the compound or playing loud irritating tapes of jet planes and the cries of rabbits being slaughtered. Such techniques can be successful

when applied to individuals whose responses can reasonably be anticipated, but if there is one thing the authorities surrounding the compound at Waco can agree about, it is that David Koresh was not predictable.

My question is: With the benefit of hindsight and recognizing that you were dealing with a psychotic who was not likely to respond rationally to stress, efforts to break down his resistance, the increasing of the pressure and so forth, would you recommend a course different from the law enforcement procedure applied in the Davidian standoff should a similar situation arise in the future?

Ms. RENO. What I want to do, Congressman, is talk with Mr. Restak because I saw this article and reviewed it at the time this past Sunday, talk with any other expert I can, brief them on everything we tried to do and try to understand whether a man like David Koresh, whom he calls unpredictable and whom everybody agrees was unpredictable, if there is any other way to have done it.

One of the things that I have learned is: Never believe everything you read in the newspaper. And the second thing is: Make sure that the person who writes the story in the newspaper, who is being as accurate as they know how, have all the information concerning the subject matter of which they write before relying on their conclusions. And with Mr. Restak, Mr. Adams, and others who have suggested that they might have had a better way, that is what I intend to try to do.

Mr. FISH. I thank you for that.

On page 5 of your testimony, you say, "To determine how best to negotiate, the FBI was consulting with behavioral experts and others." And yet, as you know, the result of the techniques used in psychological warfare only served to make Mr. Koresh more irritable and prone to angry outbursts.

My questions are: Upon what information was this strategy of psychological warfare based and who are the experts that were consulted?

Ms. RENO. The FBI will testify after I do, and they will give you in detail just whom they consulted with and sometimes the conflicting information that was given. In fact, and I think it will be important to hear from the FBI, in terms of his outburst at times, he was very peaceful. You were dealing with a madman, Congressman, and he was totally unpredictable.

What we will do is sit down with the experts, with the experts that we consulted with, with those who now have opinions as to how we might have proceeded, and try to come up with the best understanding of what to do with people like him or others in other situations for the future.

Mr. FISH. To your knowledge, were biblical scholars and theologians involved as experts either in consultation or in negotiation?

Ms. RENO. My understanding, because I directly asked it, is that the Bureau, the FBI, had consulted with religious experts to understand the significance of the various biblical references during the course of the negotiations.

Mr. FISH. But not to negotiate directly with Mr. Koresh?

Ms. RENO. I don't know of any negotiation in which a religious person directly negotiated, but you should inquire of the FBI.

Mr. FISH. I shall.

Thank you very much, General Reno.

Mr. BROOKS. Mr. Edwards, the gentleman from California.

Mr. EDWARDS. Thank you, Mr. Chairman.

And thank you for your forthright testimony, Madam Attorney General.

I was interested in Congressman Fish's questions. Did the FBI tell you that they had examined previous experiences by the Department of Justice in situations such as this?

I am not talking about the ordinary hostage where day-to-day criminals are involved, but where highly motivated types of people like, as I said in my opening statement, white supremacists or religious people who have some kind of a cult attitude were involved.

Did they tell you that they had examined what happened in San Francisco a number of years ago when Indians took over Alcatraz Island and the President—it happened to be President Nixon at that time—said, "Let them stay and they will get tired of it," and they did; they stayed over a year, and then they got tired of it and left.

And had they also looked into what the Federal Government, the Department of Justice did at Pine Ridge where a similar waiting period worked out rather well?

Ms. RENO. I do not recall any reference to Alcatraz nor to Pine Ridge specifically, Congressman. Again, what we were dealing with here was not somebody who had just taken over a place, but people who were dangerous in terms of the surrounding community, who had killed people, and a perimeter which had to be secured.

As I recall, we discussed whether we had ever seen a situation—I had obviously not seen a situation like that in my experience in Miami—but whether we had ever really seen anything precisely like this. And my information was that we had not, but I would refer you to the Bureau in order to make sure the Department of Justice's representations are as accurate as possible.

Mr. EDWARDS. Well, I think we will have quite a lot of questions for the FBI, because after all you were only there less than half the time that the siege was going on.

I guess, Mr. Chairman, I will yield back my time.

Mr. BROOKS. Thank you very much, Mr. Edwards. Mr. Carlos Moorhead, the gentleman from California.

Mr. MOORHEAD. Thank you, Mr. Chairman.

You know, one question I would like to ask, and you may not be the one to ask this, but why was the press notified prior to the BATF going in there to begin with? Obviously, they knew about what was going to happen inside the perimeter. In one of the briefings we got, it was stated that one of the people who came from inside was notified by a journalist about what was going to happen. They knew about the whole thing. Why did that happen? Why was the press notified?

Ms. RENO. Congressman, again, I have tried to focus my responsibility and my review on the issues that the Department of Justice confronted, and I would respectfully refer you to ATF.

Mr. MOORHEAD. All right. My next question is, you state in your opening statement that the big question you had was whether the gas could cause permanent injury to the children. Was there any

consideration about whether this type of attack, using the tanks and gas could be successful or would be successful? Did anyone weigh the damage that could occur and what possible harm would be done?

Ms. RENO. When I say the big question, that was the threshold question. I was not even going to consider using gas unless I could be sure it would not be permanently harmful to children. So that was the threshold question before I began the deliberations.

We then continued with the big question being why now, why not wait, and those were the alternatives. I reviewed it. I became convinced that the gas was not harmful; that the gas as described by the commanding officer of the Delta Force and by the head of the HRT, the FBI Hostage Rescue Team, would force the people in the compound out.

As I have said, I took into consideration that there were concerns expressed that Koresh might commit a mass suicide, that he might commit suicide. I expressed concerns he might put the children up against the windows and threaten to do things to the children, and I gave specific instructions that if anything like that should happen, we should fall back immediately.

But the issue was, based on what we had been told and the comments made by Koresh, that if he were going to do something like what he did, he could do it and might do it at any time, particularly when the Bureau has less control of the situation than it had with the HRT team on the site.

Based on what the commanding officers of the Delta Force told us and what the HRT team told us, the gas was going to be so uncomfortable that they would come out rather quickly. Some would be more immune to it than others. They would have gas masks. We knew they had gas masks. And that might give them a longer period of time before they came out, but that they would come out.

One of the things that I was concerned about, I kept thinking of what can be the worst case scenario, and what I envisioned was that he would do something terrible like set an explosion, and I just balanced it with the fact that this was something he had threatened to do that I could not control based on all the information that we had.

Everything we had been told was that he could stay there for over a year. It was something that I felt that we were in the best position to bring to a conclusion by increasing the pressure through the use of gas.

Mr. MOORHEAD. But there were children being let out from time to time and other people who were in there decided to leave and had already left.

I don't know how many able bodied men were inside this place, but it would seem to me that their ability to resist was being eroded by the people who were being allowed to leave.

It just seems to me that some gain could be achieved by letting time go on. I know it was costing \$1 million a day and that is a lot of money, but that, weighed against all the lives that were lost, doesn't sound like that heavy an expense.

Ms. RENO. Congressman, you don't consider dollars when you consider human lives and that was not a factor I considered at all.

What I tried to consider was the best way to resolve it over time with the least danger to all involved.

Most of the people who had come out had come out early on. They were in there; they were not coming out; they were heavily armed. They had .50-caliber ammunition that could fire a distance from here to the White House. They were not somebody that was a nondangerous offender who was sitting there because they wanted to take over a place. These were dangerous people who had killed and who had the chance of killing again.

Mr. MOORHEAD. I think we understand that, obviously. But we learned at Jonestown that being pressed, these people that are a little warped to begin with, choose suicide many times. The pressure down there was very soft, and just one of our Members of Congress had shown up and they thought he might be a danger and they caused all that damage there. This was very similar to that incident.

Ms. RENO. Congressman, we will welcome any suggestions you have as to any issue that we might review to avoid a tragedy like this for the future. Nobody will ever know what the right answer was in this situation, and I think we have to collectively work together to come up with the best guidelines, the best procedures to try our level best to avoid a tragedy such as this in the future.

Mr. MOORHEAD. We cannot do anything about this one, but I think we can learn a lot for the next time something like this comes up. History has told us these things repeat themselves.

Ms. RENO. Well, I am trying my best to make sure I have exhausted every possibility of learning everything I can in the course of these next several weeks that can avoid a tragedy like this in the future, if it is possible. In some instances with a madman like that, it may not be.

Mr. MOORHEAD. Thank you.

Mr. BROOKS. Thank you very much. Mr. Conyers, the gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

Madam Attorney General, I am extremely disappointed in the decisions that have been made out of the Department of Justice, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco and Firearms.

In Philadelphia, we had a mayor that bombed people out of an eviction. In Jonestown, we lost the life of my colleague, Congressman Ryan, who tried to get Don Edwards to go out there with him, because of a miscalculation about cult people. We had Patty Hearst and the Symbionese Liberation Army. We had Wounded Knee with the Indians.

Now, when in God's name is the law enforcement at the Federal level going to understand that these are very sensitive events that you cannot put barbed wire, guns, FBI, Secret Service around them, send in sound 24 hours a day and night and then wonder why they do something unstable?

The root cause of this problem was that it was considered a military operation, and it wasn't. This is a profound disgrace to law enforcement in the United States of America, and you did the right thing by offering to resign. You did exactly the right thing. I commend you for it.

Now, there is no longer any reason why the Bureau of Alcohol, Tobacco and Firearms cannot be folded into the Federal Bureau of Investigation, and if there is some reason for continuing ATF, I would like to hear it today, and I will be introducing legislation to that point very, very shortly.

And now I would like you to know that there is at least one Member in the Congress that is not going to rationalize the death of two dozen children that were not cultists, they were not nuts, they were not criminals. They happened to be the children of people and they were innocently trapped in there. The decision that was jointly made by these agencies bears extreme criticism.

And it is not President Clinton's fault. He is taking your advice. He is taking Judge Sessions' advice. He is taking Mr. Higgins' advice.

And so I would like to get some straight answers. I have read so many conflicting rationales about this that it is absolutely embarrassing, and I have been through each of these incidents that I have cited. Doesn't anybody have any historical recollection in Federal law enforcement about how to deal with these kinds of people?

I will yield the balance of my time for anything you would like to respond to me, Madam Attorney General.

Ms. RENO. I have not tried to rationalize the death of children, Congressman. I feel more strongly about it than you will ever know. But I have neither tried to rationalize the death of four ATF agents, and I will not walk away from a compound where ATF agents have been killed by people who knew they were agents and leave them unsurrounded. I will not authorize a military excursion with the forces of the military into that compound with a direct assault such as what you might expect in a military situation.

I will stand by and be proud of the FBI as it used its restraint; but most of all, Congressman, I will not engage in recrimination. I will look to the future to try to learn everything I can from this situation to avoid tragedies such as this in the future.

Mr. CONYERS. Are you concluded?

Ms. RENO. I am not concluded if you have further questions of me, sir.

Mr. CONYERS. Well, I consider that a nonresponsive answer.

Ms. RENO. You did not ask me a question, sir. You asked me if I had any comments.

Mr. CONYERS. And I consider those nonresponsive comments.

Ms. RENO. Do you have a question of me, sir?

Mr. CONYERS. I have more questions of you than I will ever get time to ask you in this committee.

Ms. RENO. I will answer any questions, and I will come to your office.

Mr. CONYERS. Well, I would ask the chairman to—

Ms. RENO. I will come to your office and be prepared to answer any question at any time that you may ever have about anything that I have ever done.

Mr. CONYERS. Well, I will thank the gentlelady and accept her invitation.

Mr. BROOKS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman. Hopefully, a little change of pace.

I just want to comment that all of us are sometimes victimized, and I use the word with some caution, by experts. We rely on experts a little too much sometimes and we should be more aware of the fact that there are experts and there are experts and there are experts. It would seem to me common sense would dictate that suicide was a real possibility, dealing with people who are religiously obsessed in an aberrant or bizarre direction and with the history of Jonestown, where 900 people lost their lives. To say suicide was not a real possibility, I would wonder if all the experts would have said that.

Now, I know you don't know because you relied on the FBI who relied on the experts. I will ask Mr. Sessions and others whether that was a unanimous view or whether there were other experts and they chose to believe one set of experts and gave you that information.

But you made a statement that only the Hostage Rescue Team was appropriate to accomplish the mission they were assigned to in this operation. Then we note that fatigue had set in on the Hostage Rescue Team. That troubles me because evidently we only have one Hostage Rescue Team. Maybe we have two. I understand it is made up of 50 people and there are two groups of them, 25 and 25, but the inability and the impatience to wait out these people does trouble me. If there was no backup, if there were no people to relieve the Hostage Rescue Team then I am concerned about that.

Because if indeed we have hostage situations on both coasts simultaneously, one in Seattle and one in Pensacola and we only have one team, then we are in trouble. So I have made inquiry, too, as to why we didn't have adequate backup, if, indeed, only a Hostage Rescue Team is appropriate, and the Delta Force is out, and SWAT teams are out, and theologians are trying to seduce these people to come out—all of that is inappropriate. We have to rely on a Hostage Rescue Team and we don't have adequate resources.

So I tried to find out why. I thought perhaps Congress was to blame, that we wouldn't provide the funds that the FBI has asked for—funds to train more Hostage Rescue Teams and Congress wouldn't give them the funds. If so, then it is our fault. I learned no, that OMB made that decision. The FBI has asked for additional funds to train additional Hostage Rescue Teams but they have been denied that by OMB—not this OMB but the previous Office of Management and Budget and previous Justice Department.

So I guess the moral of the story is, if you are taking testimony from people and you want to know what is going on, you better know the right questions to ask, because I never knew about the shortage of Hostage Rescue Teams.

I think if Congress knew about that, we would be forthcoming with appropriate funds, because hostage taking cannot be confined to one incident at a time. So I just ask you, is it not a fact that we didn't have sufficient backup, they did get fatigued and it would have been helpful if they did have backup rescue teams?

Ms. RENO. One of the things I am not is an expert on how Hostage Rescue Teams should be staffed or deployed, and I would re-

spectfully defer to the FBI, who I think can furnish information to you concerning budget requests that have been made.

But one of the things that we are in the process of doing is to determine just what appropriate staffing levels should exist, even if this situation could be resolved in short order, if there had been another situation, an airplane hijacking or something such as that. And, we would like to approach it in a very orderly way to make a recommendation to Congress.

Mr. HYDE. Well, sure, and I am going to try to know what questions to ask the next time the FBI appears before our subcommittee so things they need and want we can elicit directly from them. Maybe we need to go around or underneath or over the OMB or the Justice Department. Thank you.

Mr. BROOKS. Mr. Romano Mazzoli, the gentleman from Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman, and thank you for holding the hearing. We appreciate it.

I think all of us applaud the heroism of the FBI, of the ATF, of the good people that my friend Chet Edwards represents down in Waco, the sheriff departments, the fire departments, the people who showed up at the place. We grieve, obviously, the ATF agents who were killed, the 16 that were wounded, their families, and as my colleague from Michigan has said, we grieve the children who perished and all of the adults in the compound.

We applaud you, Attorney General Reno. We know you have done a very good job and you have had a very difficult first encounter with the life that you will live as our Attorney General, and I applaud you for taking responsibility. I think that is in the spirit of public service and we appreciate that, and just like my friend from Illinois, Mr. Hyde, is saying, we want to help you do the job better, so if it comes to appropriations or moneys or things like that, we hope you are not at all hesitant, even if it means breaking from the administration in some respects to tell us what you really think your Department really needs. Because too often we have sat in hearings and we have had members from other administrations come up and act as loyal soldiers in carrying out their instructions, failing to ask for what they know they should have, and they fail, therefore, to get it and then sometimes there is a failure down the line. So we hope that you will say that.

And we certainly hold only responsible here David Koresh and those people who followed his persuasion. I think, as you said, what we need now to do is look to the future, try to develop some ways to avoid these horrible carnages. And in looking to the future, we will not at all question the valor, the heroism, the great devotion and dedication of all the people who were down there for those 51 days and are still down there trying to figure out what went on.

But I think it is correct and certainly I glean from your own questions in your statements that we have to look at the training, we have to look at the techniques, we have to look at the coordination, we have to look at the professional skills to see that the people who act in your behalf and our behalf are up to the task that they would face.

In that setting, I would ask this question: In some of the television that occurred soon after the blaze at the compound, families

said they pleaded with President Clinton, they sent fax messages to the White House, apparently pleaded with you, maybe pleaded with the FBI, maybe with the ATF, to let some of the family members go in there and see if they could not reason and solve the problem.

My question is: Did you ever say no to those requests? Did they ever reach your desk? Are you aware of the FBI ever having denied family members an opportunity to intercede?

Ms. RENO. I never—those requests never reached my desk and I am not aware of that. You would have to check with the FBI on that. I am not familiar with it.

Mr. MAZZOLI. So you are not familiar with whether they existed at all or whether they were denied.

Ms. RENO. That is correct.

Mr. MAZZOLI. Let me ask you, the question was raised that a lot of callers apparently watching the blaze on television in live coverage called the fire departments and called FBI and said, why aren't the fire departments there. Now we realize all the logistical problems of water on the scene, of long-distance rifles with the capability of killing the fire people who might respond.

Are you aware of any discussions that you had with all these people leading up to this misadventure that the question of available fire department personnel, available water, special pumps, auxiliary electrical supplies, was ever brought up?

Ms. RENO. I never specifically discussed fire vehicles. I just discussed a sufficient emergency response because, as I indicated to you, what I envisioned was—I mean, even if he didn't do something, there might be an accidental explosion considering all the ammunition, and I just directed there be sufficient emergency vehicles to respond both from a medical and any other point of view, but I did not specifically address the issue of fire vehicles.

Mr. MAZZOLI. We are proud of the work our firefighters do around the country, and we have a fire caucus here on the Hill. These people are trained beyond almost any enforcement officers in responding to emergencies, whether they involve fire, hazardous toxic smoke, whether involving giving first aid and immediate rescue to people, but, apparently, they were not involved here.

Ms. RENO. You would have to ask the Bureau exactly what they worked out with the fire departments.

Mr. MAZZOLI. Let me ask you one other question, General Reno. I have read, and I may not be asking the right person the question, but I have read that Koresh was a jogger and that there were times during those 51 days he went out for his exercise, came away from the compound and was jogging in that area I guess that was cordoned off.

Are you aware of that having been the case and whether or not any of your discussions dealt with what could be done while he was absent the compound?

Ms. RENO. I never addressed that. The only—I never heard of Koresh being outside the compound other than just to go outside, but my understanding from the Bureau was that they were trying to restrain the boundary, the perimeter immediately around the compound, by increasing pressure.

Mr. MAZZOLI. I am talking about jogging, when he might have been out in something—

Ms. RENO. I have not ever heard about anything about Koresh jogging.

Mr. MAZZOLI. Well, thank you very much, and again my time is about to expire and all the Members want to ask questions.

Again, I want to applaud you on your willingness to accept responsibly here, even as we gather it was not your responsibility to accept, but you did it anyway. And I applaud the committee for trying to get to the bottom of exactly what did go on and what could be approached for the future.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you, Mr. Mazzoli. The Chair recognizes Mr. Sensenbrenner, the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman, and I hope when you come back, General Reno, it is in a little more advantageous circumstance than this one.

I have a few questions relative to the chain of command and the decisionmaking process. The first is: After you assumed office, were you briefed every day on the Waco situation?

Ms. RENO. Not every day.

Mr. SENSENBRENNER. But frequently enough?

Ms. RENO. Frequently, and if there were any changes or any new developments.

Mr. SENSENBRENNER. By whom were you briefed?

Ms. RENO. By Director Sessions upon occasion and by Mark Richard in my office. Those were the two primary—and people who would be with Director Sessions.

Mr. SENSENBRENNER. At any time prior to Saturday, April 17, which was 2 days before the fire broke out, did you discuss this matter with the President?

Ms. RENO. No, I did not.

Mr. SENSENBRENNER. When was the first time you discussed the matter with President Clinton?

Ms. RENO. Sunday.

Mr. SENSENBRENNER. And at that time did you brief him about what the FBI's plan was and seek his reaction?

Ms. RENO. Yes, I did.

Mr. SENSENBRENNER. And what was his reaction?

Ms. RENO. He supported my decision.

Mr. SENSENBRENNER. When was the first time after the fire broke out that you talked to President Clinton about what happened?

Ms. RENO. That night, late.

Mr. SENSENBRENNER. You appeared on Tom Brokaw's program, which I had hoped to see but I had already fallen asleep by 11:30 at night, and at that time Mr. Brokaw asked you 10 hours after the fact if you had discussed the matter with President Clinton. You said that you didn't. In a part of that interview you said you were going to talk to the President after you got off the air. Is that when you had your first conversation with him?

Ms. RENO. I don't remember the exact time when I got off the air because I was then subsequently responding to further inquiries from the media and felt it was important, since I knew the

President had been briefed as to what had happened, to try to respond to the American people and be accountable to them since I considered it my decision.

Mr. SENSENBRENNER. During the Brokaw interview, you said that the President was talking with Webster Hubbell about what had happened in Waco and the events leading up to that. Could you tell us what you found out about that conversation between the President and Mr. Hubbell?

Ms. RENO. What I think I did, and that may be subject to correction, because I think what I told Mr. Brokaw was that Webster Hubbell will be the person discussing the issues with the White House. I had talked with the President that morning, and I had forgotten during the course of that afternoon, in all that had happened, that before the fire broke out I had given him an update. Hubbell was talking to the White House that afternoon and into the evening.

What I thought I corrected myself with Brokaw was to say I don't know whether Hubbell had talked directly with the President or with somebody in the White House Counsel's Office.

Mr. SENSENBRENNER. Do you know if Hubbell ever went to the scene of the siege outside of Waco after it started?

Ms. RENO. No, he did not.

Mr. SENSENBRENNER. So he did not go there; it is not that you don't know?

Ms. RENO. He did not go there.

Mr. SENSENBRENNER. What was Mr. Hubbell's role in this? The concern I am having is there has not been direct communication between you, as head of the Justice Department, who has got the ultimate responsibility, as you have accepted for the activities of the agency, your Department, and the President—that somehow Mr. Hubbell was in the loop. And I think it would be instructive for us to know exactly where in the loop he was.

Ms. RENO. Mr. Hubbell is the Associate Attorney General Designate and he was talking with the White House Counsel's Office. I had talked to the White House Counsel's Office and that was how he was in the loop. I was the person who briefed the President on the Sunday before it happened as to what the plan of action was, and he supported it. I talked to him that night after it happened. I have talked to him on several occasions since then, and he has been very supportive.

Mr. SENSENBRENNER. From what you said to Mr. Brokaw, apparently Mr. Hubbell was talking to the President before you were able to talk to the President after the fire broke out and the people perished. I am trying to find out what Mr. Hubbell's role was in all of this. He has not been confirmed by the Senate or sworn in. He has been designated but he is still not officially in that job.

Ms. RENO. As I indicated, I think I corrected myself or at some point during the course of the evening corrected myself when I realized I didn't—I knew he had been talking to the White House. I don't know whether he talked directly to the President. I made a point of talking directly to the President. He had been fully briefed, understood what had happened; and we have continued to talk.

Mr. SENSENBRENNER. Did he play any role in your approval process of the breaking up of the siege in Waco?

Ms. RENO. Yes, sir. I talked to him the Sunday before, on April 18, and explained to him what we proposed to do and he approved.

Mr. SENSENBRENNER. Was he briefed by the FBI on what the options were, independently of you?

Ms. RENO. No, he was not.

Mr. SENSENBRENNER. Thank you very much.

Mr. BROOKS. Mr. Hughes, the gentleman from New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman, and first of all, let me thank you, Mr. Chairman, for convening this very timely hearing and welcome, Madam General.

Let me just say that, like my colleague from New York, I think most of us are very happy that you are the Attorney General of the United States. You take the kind of compassion and toughness and savvy and experience to that office that we need. You are like a breath of fresh air and we wish you well. We were happy the President supported you wholeheartedly when you offered to resign.

I am concerned about a couple of areas. My colleague Henry Hyde has already touched on one area. Since Talladega some 18 months or so ago, we realized that we have one Hostage Rescue Team. Despite that, fatigue should never be a factor in our decisionmaking. I hope that we will look at what we need to do to provide the resources so that we don't have that as a factor in our decision as to when to move in law enforcement operations in the future.

Let me focus, instead, more directly on who we consulted. I understand you have indicated that the FBI will testify as to who they consulted by way of behavioral experts. You testified that you did talk to Dr. Harry Salem relative to the use of tear gas and his expertise in this area.

Did you ever talk to any of the folks from the American Family Association that has developed quite a bit of expertise or the Cult Awareness Network possibly during this time?

Ms. RENO. I personally did not, sir.

Mr. HUGHES. Do you know whether the FBI did?

Ms. RENO. I have not heard of the American Family Association, but I am not sure that that is—

Mr. HUGHES. Family Foundation.

Ms. RENO. I think the American Family Association and the American Family Foundation are separate but—

Mr. HUGHES. They are and the foundation is what I am referring to.

Ms. RENO. They are, and I have not talked to them.

Mr. HUGHES. The American Family Foundation has developed a great deal of expertise, as you may know. Are you familiar with the article that appeared recently, in fact, April 20, on how we should prepare for future Jonestowns?

Ms. RENO. I have a copy of that article. I am trying to collect as much information as I can to pass on both to the investigators from within the Department and independent investigators so that we make sure that anything such as this is fully considered in trying to develop guidelines, processes and policies for addressing these issues in the future, and also, as Congressman Edwards points out,

for addressing noncult situations that might develop in the same fashion.

Mr. HUGHES. One of my main concerns, and I have corresponded with your Department before you became Attorney General, is over the lack of information, strategic information in particular, about cults around the country. We don't even know how many we have. While the CIA apparently many years ago did some indepth studies on mind control, we have done very little apparently. I realize there are some serious first amendment questions involved, but it seems to me we cannot deal with situations like this without a lot more information.

One of the constructive suggestions I have received from those that are working with the Cult Awareness Network, and I have been in touch with them for a number of months, is that we don't know how to deal with people like David Koresh or Vernon Howell in these types of situations because it is not like the usual hostage situation. I would hope that we would try to develop that kind of expertise in the future.

I am not faulting, you know, basically any agency, because I understand the difficulties; you have to be careful with regard to freedom of religion in particular.

Ms. RENO. As you know, Congressman, we met and I am following up on some of your suggestions and doing everything I can to make sure that we determine all available experts that can advise us in terms of how we address these problems in the future, what do we do now to address the cults that exist, what actions should be taken if any. We want to do a very careful review.

Mr. HUGHES. Frankly, I don't know that it would have made any difference whatever we would have done. David Koresh is responsible for what happened. I don't buy the suggestions of my colleagues that the law enforcement community should be criticized. I don't agree with the suggestions I have heard that the search warrant needs to be examined carefully and the complaint that was filed. I read it last evening and there was more than enough evidence to issue both the search warrant and the arrest warrant, in my judgment, and I am sure most of my colleagues will agree with that assessment.

The issue is what we can do to provide more information so that we can make better decisions to avert what occurred. I am going to have some questions of ATF about the options we were presented with. I gather the FBI was not in the loop when you made the decision on April 19. Had the FBI been consulted at that time on the plan that was developed?

Ms. RENO. The FBI?

Mr. HUGHES. I am sorry, February 18, yes. February 19.

Ms. RENO. February 28?

Mr. HUGHES. February 28, I am sorry. The day you made the decision to go ahead with one particular plan after weighing the options.

Ms. RENO. I would have to refer you to the FBI on that. Again, I focused on what happened as we, as existed on the date that I took office, and what I had been briefed on in terms of the Department's responsibilities, including the FBI.

Mr. HUGHES. So you are not sure at this point whether the FBI was consulted——

Ms. RENO. No, I think to be accurate——

Mr. HUGHES [continuing]. As the plan evolved. Did you ever look at an option that would, as Mr. Mazzoli has suggested, basically attempt to get David Koresh when he was outside the compound?

Ms. RENO. I asked them if there were any situations where we thought we could get them out and isolate them, and based on the information they furnished to me, that was not going to be possible.

Mr. HUGHES. Mr. Chairman, I just hope that we don't rush to judgment. I hear suggestions that we should realign ATF. There are some difficulties there because they have regulatory responsibilities that don't lend themselves to law enforcement missions. But I hope out of this will come an examination of what occurred, of the structure of the mission, the command and control and see if we can do it better next time.

And that is not leveling any criticism at anybody, because I believe that David Koresh is the one who was responsible for the deaths of the children and the adults that died in that compound. Nothing is going to change that, in my judgment.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Hughes. Mr. Gekas, the gentleman from Pennsylvania.

Mr. GEKAS. I thank the Chair and join in the welcome that has been proffered to the Attorney General in these proceedings.

Many of us on this panel, as you have probably discerned by now, are former prosecutors. Because of that we have a kind of a feel for the process that was undertaken from beginning to end and understand that part of the responsibility in a criminal action is to prepare for the eventual court proceeding.

In that regard, I wanted to focus on something. When you came on board as Attorney General and were sworn in, who was the U.S. attorney in the Waco area? My information is that was the western district of Texas; is that correct?

Ms. RENO. Mr. Ederer.

Mr. GEKAS. Yes. And our information also, and you can confirm this, is he was instrumental in the preparation of the search warrant and the affidavits and the consultations with the judge in this case; is that correct?

Ms. RENO. I don't know, sir.

Mr. GEKAS. You don't know that?

Ms. RENO. I don't know whether he was personally instrumental or not.

Mr. GEKAS. Well, when you issued your order or directive or announcement, about dismissing or asking for the resignations of U.S. attorneys, did that include Mr. Lederer?

Ms. RENO. What we did when we asked for the resignation of U.S. attorneys was to take each case on a case-by-case basis to make sure there was a term transition and nothing was impacted. One of the first questions I raised was the issue of Waco to make sure there was an orderly transition.

Mr. GEKAS. Was that based on the severity of the case or the importance to the public of the case? There were criteria apparently that you utilized in asking him to stay on.

Ms. RENO. The criteria I utilized in each instance was to make sure there was no interruption in ongoing matters that would be affected by a U.S. attorney leaving, if there was going to be an interim U.S. attorney appointed.

Subsequently, concern was expressed by people at the scene. I sent Mark Richard from the Criminal Division to Waco to personally meet with everybody concerned to make sure we had the best prosecution presence available on the scene to properly handle the matter.

Mr. GEKAS. So the reports you got back from Mr. Richard were to the effect that he should be requested to stay on or that he could stay on; is that it?

Ms. RENO. What we discussed with Mr. Richard was we reviewed it to see what experienced prosecutor should be assigned as the trial prosecutor who would actually handle it who had had extensive experience. Recommendation of the Criminal Division was that that would be Mr. Ray Jahn, I believe the last name is spelled J-a-h-n, who had had extensive experience, as I recall, in the prosecution of a case involving the murder of a Federal judge.

Based on all the conclusions, everybody's discussions with the FBI, with local prosecutors, with people on the scene, Mr. Richard met with Mr. Ederer and people on the scene. We determined that Mr. Ray Jahn would be the person that would lead the prosecution at the scene.

Mr. GEKAS. In Mr. Ederer's jurisdiction, you are saying?

Ms. RENO. Yes, Mr. Jahn, as I understand, was an Assistant U.S. attorney in Mr. Ederer's office.

Mr. GEKAS. And Mr. Ederer would be staying on?

Ms. RENO. That was going to be addressed as we went along, but we felt very comfortable with Mr. Jahn being on the scene and being the person directly involved in the prosecution of the case.

Mr. GEKAS. Was Mr. Ederer relieved during that time? Was he not supposed to focus on this incident while Mr. Jahn was doing his—

Ms. RENO. Mr. Jahn was going to be the person directly on the scene, handling it directly, coordinating with the Texas Rangers, with the local prosecutors, with everybody involved on the scene since Waco was somewhat removed from San Antonio.

Mr. GEKAS. So if a new search warrant or other affidavit or other legal process would have to be confronted at the initial stage, it would have been presented by the FBI or ATF to Mr. Jahn at that time?

Ms. RENO. To Mr. Jahn and the person who had been at the scene whose name, as I recall, is Bill Johnston, who was the initial Assistant U.S. attorney on the scene.

At this time, the Criminal Division is supervising the prosecution, and reviewing any additional legal process in this matter. Which prosecutor personally handled the search warrant I would have to refer you to ATF, and we will be happy to furnish you with the information as to who assisted in the original search warrant from the U.S. attorney's office.

Mr. GEKAS. Is Mr. Lederer still on duty?

Ms. RENO. It is Ederer, E-d-e-r-e-r.

Mr. GEKAS. Ederer?

Ms. RENO. Yes, E-d-e-r-e-r.

Mr. GEKAS. Maybe I didn't ask it correctly. Is he still now the U.S. attorney for that district?

Ms. RENO. I don't know. I'll be happy to furnish you that information to see whether he has resigned at this point or not.

Mr. GEKAS. On another matter.

Ms. RENO. I am told that he is still there.

Mr. GEKAS. Just to follow up, to complete that portion of it, when the decision was made that his resignation should not be requested, I take it you can confirm it one way or another.

Part of the reason that he was not asked to resign was the importance of the case, the public attention which had been drawn to it and the general circumstances of the high visibility of that case; is that correct?

Ms. RENO. That would normally be one of the factors, sir. However, it was my decision that supervisory responsibility in this case be transferred from Mr. Ederer to the Criminal Division where it remains today.

Mr. GEKAS. I have no further questions.

Mr. BROOKS. Thank you very much. Mr. Synar, the gentleman from Oklahoma.

Mr. SYNAR. Thank you, Mr. Chairman.

Welcome, Ms. Reno. Let me focus in on the tough decision you eventually had to make. In making that decision, was there any additional information you either wanted or needed that you did not have available to you at the time of the decision?

Ms. RENO. I asked question after question, Congressman, about the circumstances of the children, about anything that I could think of trying to elicit as much information as I could to make sure that we had fully explored everything, and I don't recall being told we cannot furnish you this information. I mean, each question where I was told no, we cannot do that, was based on a technological impossibility.

Mr. SYNAR. In making your decision, what influence did the death of the four agents have in that decision?

Ms. RENO. The deaths of the 4 agents and the injuries to the 15 or 16 other agents created the situation, in the first place, of a dangerous offender who knowingly had killed Federal agents, who had knowingly injured Federal agents, who was dangerous, armed, armed with very high powered weapons. All of those factors created the situation in which I was faced with a situation that I could not say, here, put down the guns; we will walk away from this or here we will put down the guns and let Koresh come out and talk to us. Here was a person who had murdered and, obviously, that was a significant factor.

Mr. SYNAR. What influence did the nature and amount of weapons within the arsenal have on your decision?

Ms. RENO. That had a real impact because I learned a lot more about weapons. At first, when I asked why we needed an HRT, or Hostage Rescue Team, to try to ensure the security of the perimeter, I was surprised when they said, well, we are going to have to pull back at some point if we don't, are not able to resolve this, because they are the only ones that can really secure the perimeter.

I said, well, why not a SWAT team or bring in other agencies. Then, they started describing just how far a .50-caliber weapon or ammunition can travel and started putting it in terms of from here to the White House and I even questioned that. And they said, well, an effective range is 3,000 yards and an intentional killing range where they have a real chance of success is 1,000 yards to a mile. And, as I put those into perspective, just looking at Washington areas, that was another factor.

The powder they obviously had in the place, the degree that they had armed themselves, the fact that they had built additional gun holes and portholes from which to fire these weapons was certainly a factor because I was concerned with the life of FBI agents on the scene. I was concerned with people who might wander into the compound area and institute or just initiate through accidental, or other means, a confrontation with them. There were so many factors that had to be considered because these people were armed and extremely dangerous.

Mr. SYNAR. What influence did the resources being expended have on the decision?

Ms. RENO. That is the one factor that people kept mentioning that I tried not to address, because I don't think that you can address the exposure—I mean the danger of exposing human life. It was expensive, but I just very early on put that in the background and said I can't consider that when I have the lives of the children at stake.

Mr. SYNAR. And the length of time the agents had been on site, how did that influence your decision?

Ms. RENO. That influenced my decision in the sense that I was told—the first I heard about it—was by Delta Force and I had not yet had the chance to meet with the head of the Hostage Rescue Team but he was there the same day. Both pointed out the state of readiness of the HRT would be diminished if they were required to stay on the scene much longer; that they could pull back.

But, at the same time, the compound was arming itself with gun holes and taking other precautions, and I made the decision that no time was perfect but that at this point we should increase the pressure with our expectation that it might not go down that day, the next day; we might not get everybody out for 3 days. There might be a bunker where they could go, but that we should increase the pressure to try to get them out in a peaceful, safe manner.

Mr. SYNAR. And finally, at any time during your decision process, did you feel like you had inadequate personnel, equipment, strategy over resources to make the decisions necessary?

Ms. RENO. No. Every time I turned around the Bureau was here. We asked for the Delta Force and much to my—I thought I would be talking to them on the telephone—much to my amazement there they were at the FBI, both the former commander and the present commander. Here was the Hostage Rescue Team leader, here was the doctor, the questions I was trying to probe, they always came through and tried to provide me with as much information as possible.

Mr. SYNAR. Thank you.

Mr. BROOKS. Thank you, Mr. Synar. Mr. Coble, gentleman from North Carolina.

Mr. COBLE. Thank you, Mr. Chairman.

Ms. Reno, it is good to have you here. Ms. Reno, let me think aloud with you for a minute or two and propound a series of statements and/or questions to you and I will be glad to hear from you.

On February 28, it appears that the element of surprise had been compromised, perhaps even miscalculated, and I am wondering why at that time the raid was not aborted and delayed until a subsequent time.

No. 2, many complaints have been voiced because the invasion of the compound occurred too soon. You yourself, in your testimony said "why now? why not wait?"

Let me put another spin on it, Ms. Reno, and ask if anyone considered accelerating the operation? I am thinking now fiscally, and I realize it is very delicate because you have innocent people inside that compound, but I know the daily cost was enormous. I am told it was in excess of \$1 million, and after the fact the result may have been even better to have done that.

Admittedly, Ms. Reno, every one of us at this panel up here is applying 20/20 hindsight today, and that is far easier, I will stipulate, than what confronted these agents who were in the trenches. But having said all that, it appears probably about every person who touched the ball presumably fumbled it at one time or another.

Again, that is easy for us to say today. But I don't want these hearings to conclude, Mr. Chairman, without at least mentioning—and this has been said before—I think the most crucial fumble of all must be charged against David Koresh. After all, it was he who started this in motion. He cannot, in my opinion, be exonerated and should not be exonerated, which leads me to this question, Ms. Reno:

I guess when you are dealing with what appeared to be a prominent presence of emotional and/or mental instability inside the walls of that compound, at that point perhaps a higher degree of care should have been imposed. I am curious to know if you believe that was done? I don't believe it has been asked yet at this stage of the hearing whether or not, Ms. Reno, you and/or Director Sessions ever went to Waco. I would be curious to know about that and if you did not, I would like to know why not.

Ms. RENO. With respect—

Mr. COBLE. Let me ask a couple more, Ms. Reno.

If I were drafting a plan for subsequent use, hopefully we will never have Waco II, but if I were drafting a plan to be used, I believe I would insert therein provisions for a more thorough and continuous briefing for the President. It appears, and I may be wrong, but it appears that the President was in the anteroom rather than at the head of the table. And I am thinking, if he is a former Governor, he was a chief executive in Arkansas, who knows? He may have had a similar encounter while there. I am wondering if that was ever discussed.

Finally, in response—the gentleman from New York, Mr. Fish, asked you, Ms. Reno, about psychological warfare, and I think it is clear that was a key component in Waco. I am curious to know

if you approved of the use of psychological warfare against the Branch Davidian compound?

I apologize, Ms. Reno, for hitting you in rapid-fire succession, but these are questions that have plagued me almost since the outset, and if you can respond in the time that is left, I will be appreciative.

Ms. RENO. First of all, your first question, as I understand it, is why after it appeared the ATF assault had been compromised was it not delayed, and I will have to refer you to the ATF for that. That is in another department.

Mr. COBLE. That is fine.

Ms. RENO. Second, you made reference to a complaint, the complaints that we went in too soon. Again, I spelled out why we took the time we did to try to exhaust the negotiation techniques and to do everything we could to try to resolve it peacefully. We did not go in in the sense of an armed assault. We went in by trying to increase the pressure through the use of gas.

Your third question was the other side of the coin: Why didn't we physically assault the place at the beginning, based on the fire power that was in that building?

I did not think, based on what the Bureau told me, and it was certainly their conclusion that they could assault that place physically while at the same time ensuring the safety of the agents involved and ensuring the safety of the innocent children inside.

Third—your fourth question is, you made a reference to a higher degree—

Mr. COBLE. I was going to say whether you are dealing with emotional and mental instability, some people are prone to say, "Well, my gosh, they are just a bunch of nuts, let's go in and take over." I think maybe we ought to do it in a more delicate way.

Let's say we have a problem in here. We are not quite sure what the response is going to be. Do you think that at that point they said, "Let's be especially more careful?" That was my question.

Ms. RENO. I think the FBI approached it with the greatest care imaginable. On February 28, they went into Waco, but they didn't go into that compound, they didn't assault it; they very carefully started talking to people.

As you hear from them today, they will tell you who they talked to, the care they went to, everything they did to try to effect in the most thoughtful manner possible a proper resolution of it.

You asked why I didn't—I don't know whether Director Sessions went to Waco—but whether I went to Waco. I did not go to Waco. I am not an expert in hostage negotiation. I am the person where the buck stops. I am not an expert in terms of law enforcement tactics, and the Bureau frankly told me, when we get into a tactical situation, that is our job, and I acknowledged that. But at the same time, the buck stops with me.

In terms of a review of whether they had said, "Well, we are going to go do something crazy," I would have said, "No, you are not." If they would have said they were going to do something that didn't make any sense, I would have asked them questions until it made sense.

As I asked question after question of the Bureau, their responses made sense, and nothing that I was going to learn on the ground

at Waco that I didn't see from picture after picture, from reviewing the models of the compound, from understanding everything, from understanding where every water tank was, the bunkers were, where the armament was expected to be, that was a—it was not a decision made overnight.

The first time this question of using the gas came up was during the week of April 5. There was meeting after meeting in terms of reviewing it, asking the questions, saying go get more information, go do this, check this out, let us talk with the Delta Force people, what about the water tanks, question after question.

If upon our investigation, if upon the recommendation of all involved, all of us who want to make sure that this tragedy or a tragedy like this does not recur again, they say we can do something with greater care, I am going to be the first to try to do it, but I do know that extraordinary care, extraordinary deliberation went into this.

Mr. COBLE. Ms. Reno, I think if the chairman is uneasy about the red light—my time is up. I will be glad to hear from you, but I suspect, Mr. Chairman, I must yield.

Mr. BROOKS. Have you completed your questions?

Ms. RENO. He has two more questions.

Mr. COBLE. Ms. Reno, would you approve of the plan I drafted to bring the President from the anteroom to the head of the table if he, in fact, was in the anteroom? It appeared that he was not continuously brought up to speed on this, and I am not saying this critically, but that seems to be my gut feeling.

Ms. RENO. I guess it is the difference between President Roosevelt and General Marshall and General Eisenhower and General Bradley, and I think that President Clinton did exactly what President Roosevelt did during World War II. I was in kind of the position of General Marshall, and he got briefed and he took responsibility, and he has been supportive, and it was my decision, and I take responsibility.

Mr. COBLE. So I don't think you sign off on my plan for Waco II. I say that with tongue in cheek.

Ms. RENO. I would not sign off on your plan to send the President of the United States into all the details that have to be made. Because as I was making decisions there, I was also dealing with Los Angeles and making other decisions, and there are an awful lot of issues that have to be dealt with in the country. But, the President has been supportive of me.

He was informed, he was concerned because he had had a situation in Arkansas, and he had considerable thought and he had the right questions.

Mr. COBLE. Mr. Chairman, I thank you for the additional time.

Ms. Reno, I thank you for your response.

Mr. BROOKS. Thank you very much.

Mrs. Pat Schroeder, the gentlewoman from Colorado.

Ms. SCHROEDER. Thank you very much, Mr. Chairman.

Let me say, this is a very historic day, and I am very happy to have General Reno here appearing as our first woman Attorney General.

I also think it is historic in that you have spent more time now as an Attorney General in front of this committee than I can re-

member since I have been on the committee, even though this is your first appearance. So let me say even though we are all saddened that your first appearance had to be on this topic, you have raised the responsibility and the accountability of public service to an incredibly high level, higher than we have ever seen before in this committee, and I salute you for that.

One of the things that has been talked about so much is your concern about the children, and I think you have made that point very, very well. My understanding is there are no studies or very few studies on what you do about children in a cult situation because the normal things you do in a hostage situation is use family members, but these are people who have already turned their back on the family members. So as much as family members hope they would be listened to, they have said no. They have also given up all their possessions at home and so forth, and so they have really made a determination to put their life under the control of the cult leader, and therefore the normal hostage things do not work.

Are you aware of any studies that we don't know about in this area?

Ms. RENO. Since April 19, a number of people have come forward with different ideas; and we are trying to work through all of those, reach out to as many people as might claim to have some expertise in how to deal with this complicated situation, and try to explore it as openly as possible, recognizing that this is a discipline and an area of study that is a very murky one and that there is much that perhaps we can learn.

Mrs. SCHROEDER. I noticed that in one of the California papers some of the law enforcement officers who had had child abuse charges filed against David Koresh, talking about how impossible it was to pursue the charges because what was happening was parents would give their children up for sex with Mr. Koresh on the basis that they would then be—this would be their entry to heaven. The children couldn't even really talk to them because they thought they were having sex with someone who was of a higher being than themselves. So the whole child abuse thing collapsed.

I think that gets to the next thing that I hear from my constituents and from Americans. After we learned about the man in New Jersey and all of his INS problems and how he was still there looking at the whole World Trade Center, and then we see David Koresh and we have seen countries such as Australia had filings against them way back in 1987, INS had all sorts of material to move on them, the child abuse statements from different States and so forth, you wonder how many more of these cases are out there that we haven't acted on.

I think the average American also wonders how many of these multiple violations, whether it is INS or whether it is weapons or child abuse or whatever, what else is out there and why is there such hesitation to act on these cases. Is it that we don't know what the answer is and we don't know where we are going, or is law enforcement just so overburdened that you can't get to everything?

Ms. RENO. Well, first of all, I can't respond to the prior complaints against Koresh in other jurisdictions as to whether they had sufficient evidence or what the issues are.

I can respond, after 15 years as a prosecutor in Dade County, to tell you that there is an awful lot of crime out there that law enforcement tries its best to pursue; and because of problems of proof, and particularly where you have small children or children in certain situations, it is one of the most difficult prosecutions to undertake.

In Dade County, my office was able to successfully prosecute a man who had sexually abused some 20 children between the ages of 3 and 7, and it was an extraordinarily complicated prosecution.

At the same time, I get criticized by some people saying you overreact to those situations. We don't overreact; we try to operate based on the evidence and the law, and all of these, it just requires, and what I hope to establish, is a real partnership with local law enforcement where we use the limited resources of Federal, State and local law enforcement officials, prosecutors to develop priorities, to focus on crimes of violence and crimes that tear the fabric of our children apart, and use our resources the best way we can to see that the violent people, the dangerous people, are put away and kept away.

With respect to David Koresh, after the fact, you know, after the FBI came in, when I took office, the Bureau was trying to negotiate and I supported them in that situation, though I felt that the children were in jeopardy because I was balancing all the conflicting interests that we had and the potential that they might be injured by more aggressive action on our part.

Mrs. SCHROEDER. With your 20/20 vision—we are all sitting here taking shots at you—is there anything you can think of that we might have done differently? Were there any alternatives to gas, which is a passive way of pulling people out, or are there differences in the chain of command or anything you could see that would have been helpful?

Ms. RENO. The only thing that, the only alternatives after I excluded one by one by one was to wait it out, and to take the—to pull back the HRT—take the chance with a less expert group to try to control the perimeter, bring the HRT back in, wait it out. And when I counted there was the danger of the man, the inability to secure it, the potential for people being endangered, I made the best judgment I could.

What I am looking to, what I want to, and I have had conversations with Congressman Hughes and with others, I don't know whether they are experts because I read this article with great interest when it came out, both articles, and you look at it and then you look at some of the information and you think: Well, if they had known this, what would they say? That is what I want to do. Just see if we can perhaps develop a cadre of real experts who have information about how to deal with cults or certain types of cults, or have information as to how Congressman on issues Congressman Edwards spoke of where there is no cult involved but there is an organized resistance, what we can do. Because I think we are going to see it again, and I for one don't want to be back here when somebody asks me, "Don't you remember the lessons of Waco?"

Mr. MAZZOLI. Will the distinguished gentlewoman yield for just 10 seconds?

Mrs. SCHROEDER. I don't have any time.

Mr. MAZZOLI. Mr. Chairman, I ask that the gentlewoman continue for 30 seconds, if she would yield, because she touched on a very important point.

Yesterday our subcommittee had a hearing on the question of immigration and asylum and the question of abuse of those laws which, in fact, involve Koresh to some extent, certainly that fellow Kansi and Sheikh Rahman. I would only say that we are on that trail in trying to do something with the laws to make sure they are less likely to be abused, but also we desperately need a permanent Immigration Service Commissioner. And I mentioned to General Reno, when I visited with you last Thursday at your reception, Ms. Sale does an excellent job, and if she is your choice, terrific. She did a great job yesterday. Somebody needs to be in that spot.

Ms. RENO. Congressman, I got your message, and as I told you at the reception, immigration I think is one of the most important subjects that I will address as Attorney General. I want to make sure that I choose the best person possible, and I will not unduly delay it because I want somebody, too.

Mrs. SCHROEDER. Thank you.

Mr. BROOKS. Mr. Smith, the gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

General Reno, I would like to focus a little bit more on the decisionmaking process. Who made the final decisions? Were they made with the goal of learning lessons for the future?

And in regard to that decisionmaking process, just review a little bit, it is my understanding that you first briefed President Clinton Saturday night about 7:30 on what the options were in regard to your plan for ending the siege. Is that correct?

Ms. RENO. No, I did not talk to President Clinton until Sunday.

Mr. SMITH. OK. When did you talk to President Clinton on Sunday?

Ms. RENO. I don't know what time, sir.

Mr. SMITH. Was it morning, afternoon or evening?

Ms. RENO. I think it was probably afternoon, but I don't have a specific recollection.

Mr. SMITH. It was at that point that you presented him with the options that you had considered for ending the siege?

Ms. RENO. I presented them, but he was already familiar with the options of waiting it out. The two options I saw were of waiting it out or going in with the gas, that I had in my exploration not come up with any other nonlethal means of trying to resolve it.

Mr. SMITH. Did he express a preference for either one of those options?

Ms. RENO. He said that he supported my decision to go forward with trying to increase the pressure by using the tear gas.

Mr. SMITH. You have said repeatedly during your testimony that whenever you were presented with options, you continuously questioned those options. Did the President question either of the two options that you presented to him?

Ms. RENO. He didn't raise any questions with me except to make sure that I had fully explored it. He said, "Have you gotten all your questions answered?"

Mr. SMITH. At that point, you felt that he was approving your recommendation of the option to go in and end the siege, is that correct?

Ms. RENO. No, he was approving my option which I saw as the option to use gas to try to increase the pressure to get them to come out.

Mr. SMITH. And he approved that option that you mentioned to him?

Ms. RENO. Yes.

Mr. SMITH. OK. It was at that point Sunday that he approved that option. Did he express the desire to be continuously briefed on the events in Waco within the compound?

Ms. RENO. We had been told by the White House to keep the White House posted. I don't recall the President specifically asking that, but he then called the next morning before the fire broke out and we brought him up to date.

Mr. SMITH. OK. In regard to your conversations with President Clinton, you talked to him last before the assault on this Sunday when he approved the option that you have just mentioned, is that correct?

Ms. RENO. I talked to him on Sunday and I talked to him on Monday morning. I talked to him Monday night.

Mr. SMITH. You talked to him Monday morning before 6 a.m. on the morning when the siege began?

Ms. RENO. No.

Mr. SMITH. You talked to him Monday morning after the siege began?

Ms. RENO. That is correct.

Mr. SMITH. About what time was that?

Ms. RENO. About 11.

Mr. SMITH. At that point you told him presumably that all lives were lost?

Ms. RENO. No, this was before the fire.

Mr. SMITH. On Sunday morning, excuse me.

Ms. RENO. No, sir. I talked to him I think it was Sunday afternoon and told him, discussed briefly with him, what the options were, what we had done to explore the variety of options, the fact that I had asked questions and that I felt that we should go forward.

We started the gas at 7 our time, and I talked to him about 11 Monday morning before the fire broke out.

Mr. SMITH. Before the fire broke out, OK. At that point, that was the last time you spoke to the President until when, later that evening?

Ms. RENO. That is correct.

Mr. SMITH. Were you during the course of the day communicating with the President through an intermediary?

Ms. RENO. Yes.

Mr. SMITH. Were you directly speaking to someone who spoke directly to the President?

Ms. RENO. I don't know that I spoke to anybody who spoke directly to the President. I spoke to—I was speaking with Webb Hubbell. Webb Hubbell was talking to the White House Counsel's Office and they were keeping the President advised.

Mr. SMITH. So the President was basically getting his information second- or third-hand at that point and through an individual who had not yet been sworn in or received Senate approval, is that correct?

Ms. RENO. I don't know who he was directly getting it from. Webb Hubbell was the Associate Attorney General Designate, and he had not been sworn in.

Mr. SMITH. When was the President informed that it was likely that all lives were lost, including the two dozen children, and it looked like it was going to be a fiasco?

Ms. RENO. When I talked to him that night, we still had not been able to have any determination of whether there were the possibility of people surviving, so it was probably the next day that he was told. And I don't have a recollection of the specific sequence when it seemed that we were exhausting all hope that anybody could be alive.

Mr. SMITH. At what point did the fire break out?

Ms. RENO. Fire broke out at approximately 11:42. They have the precise chronology and I get mixed up, so let the FBI furnish you with the specific information.

Mr. SMITH. Within an hour or two after the fire first broke out, because of the wind and because of what looked like a complete conflagration of the structures and the entire compound, most media were saying at that point it would be hard to believe there would be any lives that would be spared from the fire. Presumably the President was kept informed as to all this.

Why is it that he did not feel the need or that you did not feel the need to communicate directly, when it looked like you were getting a result that you neither wanted nor expected?

Ms. RENO. We made sure that the White House was advised and knew what was happening, and we were talking with people to see that everything was done in terms of trying to locate people. An agent went down. Agents risked their lives to go down into a bus that we knew was located near, right almost immediately adjacent to the compound where we were told that they might put children. We found that the bus was cool enough for people to have survived.

We continued to try, and other agents I think risked their lives to try, to see whether there was any possibility that the children or others might be alive. The Bureau may be able to give you more specific information on what they did.

Mr. SMITH. It seems to me, you say that the President was advised about the result that no one wanted or expected. It just seems to me that either the President or you would have been concerned enough, disappointed enough, outraged enough to have communicated directly, and I am disappointed that there wasn't more communication between you and the President. On something that is a fiasco on the scale that this is, for the President to simply be advised of the unexpected and unwanted result just seems to me to be disappointing and really not adequate.

And I thank you, Mr. Chairman.

Ms. RENO. Congressman, the President's and my ultimate responsibility is to the American people. I knew the President of the United States knew what happened. I knew that I owed the people of the United States an explanation. I went through all the details

to make sure that I could inform them as clearly as possible, and I tried to inform the people of the United States in a responsible fashion so that they would have answers to the question since I knew the President was advised.

Mr. SMITH. I appreciate all that. I am saying if you had time for all the news conferences and all the media interviews, certainly you had time to talk with the President. That is my only point.

Ms. RENO. Since I knew that he was fully advised and since I knew that the people of America had questions, I felt that I should respond to their questions.

Mr. BROOKS. Thank you very much.

Mr. Dan Glickman, the gentleman from Kansas.

Mr. GLICKMAN. With all due respect to my colleague from Texas, Mr. Smith, I think he is off the wall. I am extremely impressed with your acceptance of responsibility, your honesty, your willingness to make changes, your deep politicization of this issue, and I think you have handled it splendidly.

You have been in this job since March 12. You came in 2 weeks after the raid occurred. You had 16 trillion other problems that affect people's lives, such as street crime, drugs, and everything else under the sun. So I am going to accept what you are saying as the moral imperative of looking into the future and figuring out how we can keep these things—

Mr. SMITH. Would my colleague yield? Since you used my name, I would like to respond.

Mr. GLICKMAN. I will give you 10 seconds.

Mr. SMITH. OK. If you were the Attorney General, wouldn't you think it important enough to talk to the President himself after this kind of a disaster?

Mr. GLICKMAN. I think General Reno handled this satisfactorily and I have no objections to the way she handled it.

I want to go on with the issue. Do you believe you are the Nation's chief law enforcement officer? That may be a rhetorical question, but do you see yourself in that role?

Ms. RENO. I have always wondered about that because I am characterized as that on a regular basis. In Miami, I was always characterized as the chief law enforcement officer in Miami, but somebody who has the responsibility as a prosecutor has, in effect, a quasi-judicial responsibility as well.

I am also the legal advisor to the people of the United States, if you will, so there are probably a number of hats that the Constitution and Congress have put on my head.

Mr. GLICKMAN. One of the reasons I asked this question is, as I go back and look at, for example, the issues leading up to the raid on February 28, I guess it was, which I think is the key date here. It appears we had one agency of government, largely a regulatory agency, an agency that regulated cigarette taxes and stamps on guns, with some law enforcement functions, engaging in a massive raid, a company-size raid, a hundred people to serve a warrant and to do what you call law enforcement functions.

Then as I look at the material which provided the authority for the judge to issue the warrant, and it goes back through the history of David Koresh, there is no mention of contact with other law enforcement agencies, the FBI, or the Justice Department. And yet

we had a situation, we sent in 100 Federal law enforcement officers, a hundred, to try to get some guns out, to serve a warrant, and other objectives that I am not sure about, and the ATF is here and they will be able to answer that. Yet there is no relationship with the chief law enforcement officer of the United States of America.

Now, I think that is something that cries out for a legislative recommendation from you as you look through this thing in terms of in this modern era, where we have guns in numbers beyond imagination, where we have terrorism, where we have cults. There has got to be some review on how these organizations are structured and who is responsible for them, who is in control.

As I understand it, the BATF ultimately called in the FBI because the problem was of much greater magnitude than they anticipated. And I guess what worries me is that your agency, DOJ, and the FBI was not involved until this crisis occurred, and given the magnitude of it, it is of extreme concern to me.

I don't know if you have given any thought to this. You might also answer this question. You were confirmed, you became Attorney General on March 12; is that correct?

Ms. RENO. That is correct.

Mr. GLICKMAN. Are there records to show that the previous Attorney General was in communication with BATF on this case or, when I say the Attorney General, Criminal Division of the Justice Department?

Ms. RENO. Again, I have not gone through it in detail. Mr. Gerson was obviously well briefed on Waco because he, as Acting Attorney General, briefed me.

Remember, and this is an assumption on my part and we will provide the information to you, that the Department of Justice, through the U.S. attorney's office, was presumably involved in securing the warrant. I will have to provide that information, or maybe ATF can provide it.

One of the issues that I am happy to address is a recommendation as to how better coordination or structure might avoid this problem for the future.

Mr. GLICKMAN. Because, you see, if you have a confusion over turf, as I understand the statute, the ATF has the power to enforce Federal firearms legislation, explosives, but so does the FBI. I don't know where the demarcation comes.

Is it the magnitude of the case? Is it just discretionary? At some point, it looks like somebody needs to be an arbiter or a referee in this process. That did not happen here.

That is, the raid of February 28 was the critical point, in my judgment. That set everything going where when you finally made a decision in good faith that you wanted to end this thing, the pre-existing condition already was there for violence. Then given the inherent crazed nature of the cult organizations, an explosive situation took place.

So I would just urge you that I consider you the chief law enforcement officer of this country. Take the ball—bull by the horns, I guess. I am not real good at this stuff. You know what I am talking about. I am sorry, Mr. Chairman, or you can take the ball and run with it, too, as Mr. Scott said.

Do your best to make sure that these law enforcement agencies are properly organized for a violent society.

Thank you.

Mr. BROOKS. Thank you, Mr. Glickman.

Mr. Steve Schiff, the gentleman from New Mexico.

Mr. SCHIFF. Thank you, Mr. Chairman.

Madam Attorney General, I first would like to say that I have the utmost respect for you. Faced with a very difficult and a very dangerous set of circumstances, you put together all of the information that was possibly available to you and made a decision. I think that is the most we can ask and expect of public officials regardless of political party or particular position.

And I understand that it is easy to second-guess now. I am quite convinced, though, that if something had happened during this interim, especially to the children there in the compound from other causes, you would still be here being asked why you didn't move faster, I think. However, as you said a bit earlier, we are here to look to the future, to hope we don't have another situation, but to look at this one in terms of how things might be planned differently. And it is with that in mind that I have a couple of questions.

The first is with respect to your conclusion that Mr. Koresh did not intend to surrender. His attorneys, I believe, have been quoted as saying that he had inferred, at least that after he completed a biblical translation, that he did in fact intend to surrender. Are you familiar with that suggestion, and how did you decide that that was not going to happen?

Ms. RENO. That is a good question, Congressman, because I said, he is talking about when he finishes the Seven Seals he will come out. We went back over the lies that he had told the FBI up to that point, when their Passover was finished he would come out. The FBI felt that he had manipulated them and lied to them every step of the way. They can give you more of the details in terms of the notes and the information they had.

They also told me that based on their conversations and consultations with their behavioral scientists, that they concluded and the scientists concluded that he was a manipulator who would continue to manipulate. So again, if I had some point at which I could wait to, in terms of some definite point where I might, through other circumstances such as the water supply or something like that, have concluded it with the hope of not finding the children or others in distress, I would have done so, but that is what entered into our deliberations there, and we did consider it.

Mr. SCHIFF. At the other end of the spectrum, at the conclusion of this tragedy, it has been suggested, I believe, by attorneys for Mr. Koresh and possibly by some members of the group who survived, that the actual deaths were caused by the Government. That is, the Government used tanks, which knocked over lanterns which caused the fire.

Have you received enough information to come to your own conclusion as to what may have happened at the end of that situation?

Ms. RENO. I don't want to judge prematurely. I want to make sure it is done in a thorough way. Based on all the information that is available to me, it is clear based on that information to me

that the fires were set inside. But before we reach that judgment, since I have tried throughout to react based on solid facts, I would like for that investigation to be fully complete and let the independent investigators speak to the subject.

Mr. SCHIFF. Do you have any solid facts as to whether any individuals inside died of gunshot wounds or would you say that is still under investigation at this time?

Ms. RENO. I have been told very recently, both this morning and yesterday, that that is the case. Again, so that there are no misrepresentations made or conclusions drawn, I would like for the medical examiners to make those statements themselves.

Mr. SCHIFF. You referred to it briefly in your opening statement, but one of the arguments against the idea of a planned suicide was the fact that certain members from the compound were released earlier. If that occurred, wouldn't that indicate—how did you conclude that that did not indicate a concern for those individuals and other reasons?

Ms. RENO. If I understand your question correctly, it is why, that the release of the earlier ones indicated that there might be a suicide of the remaining ones?

Mr. SCHIFF. Why did it not indicate the people were going to come out, if some did come out and were allowed to come out, were not impeded by Mr. Koresh in coming out, why wouldn't that indicate to you that others might come out at a future time?

Ms. RENO. As I talked to the Bureau about that and said, what about the people that have come out; don't we expect we will get more out; my understanding is that a significant number had come out up to a certain point. Those were people that indicated to the Bureau that they were let out because Koresh couldn't control them or that they wanted out; and he wanted people there subject to his control.

Based on the number of people who had come out in the recent days before April 19, they had concluded that everybody was going to come out who could or would within the foreseeable future.

Mr. SCHIFF. Let me ask about one other area, if I may, and that is our colleague Mr. Schumer from New York indicated he was going to introduce weapons or ammunition legislation. Have you come to the conclusion from these events that there ought to be more laws enacted with respect to arms or ammunition?

Ms. RENO. What I would like to do in respect to all of this matter is again review it carefully, not jump to conclusions, and present to you after a careful review, my best judgment on such proposals.

Mr. SCHIFF. I yield back, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Schiff.

The Chair recognizes the gentleman from Massachusetts, Mr. Barney Frank.

Mr. FRANK. Thank you, Mr. Chairman.

One of the things that distresses me obviously over and above the terrible tragic loss of life first of law enforcement agents, then of other people, is a tendency that I think is corrosive to our ability to govern; and that is a tendency to assume somehow for purposes of criticism that we can come up with solutions to problems that are somehow qualitatively more elegant than the problems them-

selves, that when you judge the proposed solutions you can sort of ignore the inherent difficulties of the problems.

What I want to focus on is what your options were. Now, we have a separate set of questions we will be asking the BATF about the February 28 raid. I think there are legitimate questions they should be addressing about whether there were alternative ways to arrest Mr. Koresh.

Once he and his people had murdered law enforcement agents, as the Attorney General had said, this Government had absolutely no option but to try to bring them into the law enforcement processes. It is unthinkable that people could murder law enforcement agents and be ignored.

The questions I have are these: The options were, as I would understand it, waiting them out altogether. You have cited mortar supplies and other things that suggested that could have taken a very long time. And I want to salute the gentleman from New Mexico who I think correctly noted that had you continued to delay and delay and then had a fire broken out or then had children been killed, many of the people criticizing you now for going in would have been equally vehement in their criticism of you for staying out. But my question is: Were there third alternatives? I don't know.

I think it is important if people are going to judge, I will say my own rule is anybody who wants to criticize that decision for me, for that to have validity, I would like to see their proposal before the fact as to what would have happened. It seems to me we had this inherently difficult situation, but we had the option of simply trying to wait them out, which I agree with you sounds very unlikely. We had the option of doing what you were doing, and it does seem to me you did learn very carefully from the MOVE situation that there were very clear efforts and you did successfully avoid those dangers of what happened in Philadelphia.

Were there additional options?

Ms. RENO. I explored the options. I even thought about, can't we tunnel under or something like that, the amount of explosives in the place would expose—I mean, that would be a horrible death for agents, many of whom were heroic in the course of all this, and so I discounted that.

A frontal assault, take in the Bradleys and the CEV's. I thought about that. I mean, children were going to get killed.

I reviewed—I kept wishing that somebody would tell me that there was something that I could spray into the compound that would put everybody to sleep for 10 hours and we could go in and get them. I was told that there was no technology that would permit that to happen.

Mr. FRANK. Couldn't pipe in C-SPAN? Senate side?

Ms. RENO. What hindsight may tell us, but we will never ever know because there may have been no right answer in this, the only other possibility is different types of negotiation that might have been undertaken, and that we will explore.

Mr. FRANK. Let me say I tend to discount those. Those particularly who suggested families, I don't think any of us are really cult experts. For one thing the notion that there is is a phenomenon called cults which has a sufficient degree of similarity for you to

make sort of hard and fast judgments, I am skeptical of that. The cults are all very different, but one of the things they do seem to have in common is that they don't get to family reunions much. As I think of cults, I don't think of familial get-togethers. It does seem to me from everything I have heard, one of the factors of cults is an isolation from the families.

So it seems to me we had this situation and various forms of negotiations were tried. Either you continued to wait, knowing that people who had murdered Federal agents, heavily armed, were inside and might do damage, or you tried a more lethal method of assault or you tried what you did.

I have tried to think of the options. If anyone else has some, I would like to see what they are. In that case, I don't know what else you could have done.

Let me ask one other question. I know there is further evidence coming, but it does seem fairly clear so far that this fire was started deliberately by Mr. Koresh and the people under his direct command. If they were determined to do that, was there anything you could have done that would have avoided it? That is, was there any physical way given the nature of that setup for the Federal law enforcement agencies to have prevented it?

You couldn't have overflowed aircraft with water. You have got people with accurate weapons to bring them down. So if, in fact, one accepts that he was tragically ready to do what he did at some moment, was there any physical way that could have been prevented?

Ms. RENO. Not to my knowledge without exposing agents', a number of agents', lives to terrible danger.

Mr. FRANK. The last point I would like to say is, I regard the suggestions that the President should have been micromanaging this greater as something you ought to feel somewhat good about because people who are eager to be critical, if that is all they can come up with, it seems to me a grave mistake. And, in fact, I think this is a clear case of the tendency for people to approach these, as the psychological question, who do you like better, your mother or your father, which there is no right answer.

Had the President in fact been more deeply involved in the details, I have no doubt that many of those now critical would have been assailing him for interference. And the effort to say that somehow it was a mistake for you not to have called the President immediately when the fire broke out baffles me. I have a great deal of respect for President Clinton, but instant firefighting is not one of the qualities which I have ever attempted to attribute to him.

Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS [presiding]. The gentleman from Minnesota, Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

General Reno, I just want to say at the outset, you are a lot more than a breath of fresh air, but you are certainly that. I, too, have a great deal of respect for your candid, forthright responses to the questions.

I think you properly deferred to law enforcement experts and based your decision as pragmatically as possible upon the input

you received from law enforcement, and I commend you for that approach.

I would like to focus, General, on whether law enforcement had adequate resources. I think there is a question that has been raised as to whether adequate resources exist.

One of the two criteria upon which you based your decision to initiate the final raid was that there was only one hostage team and that they were fatigued, 50 members of that hostage team who had served so well, and that there was no backup or contingency.

Now, is that to say that were there two Federal hostage situations in the United States, that we would not have another hostage team to handle the second?

Ms. RENO. What we would have been faced with if we would have had two teams so I could pull one back or not, but that we could have agreed that we would pull one back to let them get kind of retooled, if you will, it would have been dangerous to that team to send them into—if there had been a second situation—to send them in.

What I would like to do, rather than suggest what is absolutely necessary now, is to move quickly, to have a thorough assessment, talking to—neither the Bureau nor I are proud nor think we know it all. We have tried to do everything we could to focus on the best way to do it, but anyone who has suggestions—international law enforcement officials or others—we would like to make a recommendation to you after a very careful review as to what would be appropriate.

The Bureau has made requests in past years, as I understand it, but I don't know that that request by itself would have averted this situation.

Mr. RAMSTAD. As a member of the Crime Subcommittee, I look forward to working with you on that because in a nation of 200-some million people, it seems to me that perhaps we need to provide those resources for that contingency.

The next question I would like to ask is by way of foundation for a future witness, really as a followup to Mr. Moorhead's, but I believe this question is germane. Does the Department of Justice have a policy that prohibits media presence and advance notification at the execution of warrants or hostage situations?

Ms. RENO. I can't speak directly to what has been in existence in the Department of Justice, and I am waiting to get my Deputy Attorney General confirmed before we review all our policies, but I can tell you what my policy was as State attorney for the eleventh judicial circuit, and that was, I didn't want media there at the site.

Mr. RAMSTAD. So if I correctly understand your response, you are not certain as to present DOJ policy?

Ms. RENO. What has been DOJ policy. I know in the two questions that I have had when it has been posed to me, and it has come up not in relation to Waco but in relation to two other situations, I have said, "No way."

Mr. RAMSTAD. Finally, General Reno, there has been much written by Monday morning quarterbacks as to your second criteria, that of your concern for the alleged child abuse that was ongoing, and there has been much written about the apparent discrepancies

between your stated reason; that is, the allegations of child abuse, and the Director of the FBI's statements that there was no contemporaneous evidence of abuse. Instead, the agents were relying on allegations made prior to the initial raid.

I assume in trying to give you a chance to explain this discrepancy about which there has been much discussion, headline stories like this one from the Washington Times dated April 22, 1993. I assume that you had contemporaneous evidence of child abuse, that you were not relying on allegations prior to the events of February 28.

Ms. RENO. What I had, what I was told, were there were two instances of child abuse. There was the historical child abuse which I understood. Then I understood that people continued to come out with information, and I cannot pinpoint the date of when that child abuse occurred, but that children had been abused both in terms of sexual abuse, which was ongoing, and I also understood in terms of children that were being beaten. I can't say that these, the beating occurred before February 28 or it occurred on April 18 or the 19.

The Bureau, when I kept asking, because I kept saying, "You mean they were really beaten," and the Bureau said, "That is what the reports are saying." The Bureau thought that it was continuing based again on their consultation with the behavioral experts that said there was no reason to believe it wasn't ongoing, and so that is the information that they had furnished me.

I assumed that there were reports, and it was a mistake on my part that I can't pinpoint something that had happened afterwards. I mean, after February 28. I cannot tell you that a child was beaten after February 28.

Mr. RAMSTAD. So you didn't have any specific allegations of child abuse from those children exiting the compound after February 28?

Ms. RENO. That is correct.

Mr. RAMSTAD. No specific allegations?

Ms. RENO. That is correct.

Mr. RAMSTAD. Well, I appreciate again your forthright, candid testimony and look forward to working with you in the future to help law enforcement in these and other situations.

Thank you.

Mr. EDWARDS. The gentleman from New York, Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman.

First let me say that I must strongly disagree with the comments of my colleague from Michigan, as much as I respect him personally. If there was a disgrace here, it was not with the Attorney General or with the FBI or with the ATF in my opinion, the disgrace was that Koresh was allowed to accumulate all the weapons he did, the disgrace was that he took more than 2 dozen children with him.

And I want to tell you, General Reno, that in your answer to that comment, I think if anything you increased our confidence in you.

I have a couple of questions—and clearly this was not a casual decision, you elaborated on how much you went through it. The question that leaps out to the average person is: Why did all of the authorities, yourself included, appear so confident that there would not be a mass suicide when something formidable such as a tank

or whatever came knocking at their door, given the fact that this was a messianic cult, that they believed in the Armageddon at some point on a more cosmic basis and might apply it to them? It seems to me Koresh, and this you knew far more about his personality profile than I did, but to the average person it would seem Koresh is not the type of person who would walk out of that compound in chains and face arrest or whatever charges he might meet. So I think that the question that many people are asking is just a little more elaboration on why it seemed that when this started, that it was so unlikely that they would all involve themselves in some kind of mass suicide or mass destruction?

Ms. RENO. First of all, the Bureau had carefully increased the pressure by clearing away cars and other vehicles and debris and such that would block egress and ingress to the compound, and even at one point the tank had kind of bumped into the building by mistake—the tank or the CEV. I, again, am not the expert on those vehicles—and they can tell you in detail.

Even the day before when they were removing cars from in front of the compound, and the FBI can give you the specific reference on it, my understanding is that Koresh didn't seem to be alarmed at all, even after the tank had bumped the building and said, by the way—I guess it was a Camaro or something—watch out, that is a vintage Camaro; be sure you don't hurt it when you move it away, which didn't sound like a person who was going to be that concerned as the pressure increased.

I went through it again carefully with the Bureau because they had talked with people, talked with the lawyers—they can give you the details as they went through it with me and better that they give it to you so that it is absolutely accurate as to why, although it was a possibility, and I want to stress that it was a possibility and something I factored in because I didn't—my other conclusion was that he wasn't going to come out, and that he could do this at any time, so it was a possibility.

Mr. SCHUMER. My next question is: When you were presented this plan, were you presented specific options maybe using this type of gas, maybe using some other method? Were there a variety of different options presented to you, specific options, once you made the decision that some proactive policy had to be done?

Ms. RENO. Again, neither the Bureau nor I looked at this as a proactive policy, if you will. It was just a further step in increasing the pressure as we had, as we moved closer, cleared away the cars from the compound, got the debris out of the way, put up the wire; and it was not necessarily going to happen that day. There might be people who went down in the bunkers. It was a day or two; it was increasing the pressure. But—I am sorry, what was your question, sir?

Mr. SCHUMER. My question was just what kind of—you focused on my word proactive, but were there other options, specific options presented to you or did you just sort of make the decision, well, we are going to increase the pressure and leave it up to the lower, the authorities beneath you as to how to increase that pressure and the specific details of doing that?

Ms. RENO. The first option was just direct attack, and that was carefully discounted. I explored—I thought about, as I told you—

the tunnels, if you could tunnel up under it and find where the children were and sneak through at night. But they had devices. They had long-range night scopes that could see perhaps where people were, and that would take some time. And, frankly, I stopped myself after they described the amount of explosives and the amount of dangerous weapons in there and just rejected that as exposing an agent's life to danger. I considered——

Mr. SCHUMER. You considered a lot of options.

Ms. RENO. Four o'clock in the morning, I would wake up thinking, "Well, why can't we bring somebody down on a helicopter and come through a roof or something like that." Again, that was exposing agents' lives to danger and also people in the compound.

We reviewed it to see whether there was any other nonlethal type of substance that could cope with the situation. We went through every thing we knew.

Mr. SCHUMER. One final question, on the guns issue: I know you answered my colleague Mr. Schiff about my specific proposals, that you wanted to study them, but could you give us a general feeling about the state of the gun laws, when somebody like Koresh is able to accumulate the kind of arsenal he did?

Ms. RENO. Again, I feel very strongly that people shouldn't have weapons in their hands, assault weapons that don't have any sporting purpose. That is something I have always believed.

I think we have got to look at this situation where weapons like this can be amassed, where powder like this can be amassed, and understand all that is involved and make the best judgment we can. What I want to do is very carefully consider this and the other circumstances we have seen of mass armament to see what would be the appropriate recommendation.

Mr. SCHUMER. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from California, Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

I welcome you here today, General Reno. As a new member of this committee and I believe the only nonlawyer on the committee, I may take a little different approach than some of my esteemed colleagues, so if you will just bear with me for a second.

First of all, I want to tell you and everyone who is listening that I have great respect for the FBI and also for the ATF and great respect for the job that you have done since you have come on board. I can't say enough positive things about the quality of the way you have handled answering some tough questions to a very tough situation.

I think it would be an understatement that I do take exception with the comments of the gentleman from Michigan and while I certainly respect his rights to his views, his criticisms directly toward you even to the point of suggesting that you resign, I personally disagree with that.

I am a little perplexed, however, that at the same time he suggested that he wholeheartedly supported the President's position on this issue. There seems to be somewhat of a contradiction, and that is what prompts me to ask the question. Are you satisfied, General Reno, that the President of the United States was fully briefed and he had his eyes wide open when he gave you the go

ahead, if he indeed did give you the go ahead as I understand that he did?

Do you understand my concern for the conflict? Either the President wasn't briefed, misunderstood, didn't care, whatever, and I don't know that that is the case.

Ms. RENO. I think his eyes were wide open. My understanding—and I don't know, you would have to talk to Mr. Gerson about this—but as Acting Attorney General, one of the things that he told me is make sure the President is fully advised because he had had an experience in Arkansas. So when I talked to the President I said, "I want to make sure," and he said, "That is fine." We discussed it, and he supported the effort, and he just—I think he knew exactly what I was doing. I don't have any question about that, and I think he fully supported it and I think he supported it in an informed manner.

Mr. GALLEGLY. Well, I think it was Mr. Gekas who said he was watching the television show the evening when I know you were very tired, it was about 11:30. I didn't fall asleep, so I did follow the whole show. With all due respect, it did appear that you made a tremendous effort to insulate the President, to the point of talking about the "buck ends here." I think you probably said that more than once, and I respect you for that. But Harry Truman once said, the buck stops at another desk. While I respect the fact that you were trying to insulate the President, I do think that it is important that the President still ultimately takes the responsibility for those actions.

Ms. RENO. Congressman, if I could just say something there. My mother always taught me that when you make a decision, no matter who else is involved, you have got to be responsible for it. I can't—I am not going to point fingers at the President of the United States or anybody else because he can take responsibility just as he did, but that doesn't mean that I should duck it. This was a decision that I wished I had never had to make; it is the toughest decision I have ever made. I think I owe the American people the knowledge that I assumed responsibility for it.

I wasn't trying to shield the President, and one of the things that was the nicest about it is when I got back from that round of television, I don't think I have ever been so—perhaps lonely is the word. It was about 12:20 at night. The first call I got was from my sister, "That a girl." Second call I got was from the President of the United States, "That a girl."

Mr. GALLEGLY. Well, there are a lot of people that were saying "that a girl" to you, and we continue to say that, Attorney General Reno.

I would just like to follow up on my good friend and colleague, subcommittee Chairman Ron Mazzoli's comment about your position in filling in the Commissioner of the INS as quickly as possible, and I appreciate your commitment to that as a top priority.

Mr. Chairman, I yield back.

Mr. BROOKS [presiding]. Thank you very much.

Mr. John Bryant, the gentleman from Texas.

Mr. BRYANT. Thank you very much, Mr. Chairman.

General Reno, I believe the decisions you made based on the facts that you were given was justified, and I think any alternative

decision would have been equally fraught with danger, and I regret that the outcome was unforeseeable under the circumstances.

I would like to ask, did the listening devices that the FBI had in the compound indicate what the cult's strategy would have been or was, what their plan was in the event the compound was to be assaulted or in any way advanced upon by the FBI?

Ms. RENO. Congressman, would you permit me respectfully to say "no comment"?

Mr. BRYANT. Will we learn the answer to that question in the future?

Ms. RENO. Yes, sir. I don't know the—just let me not comment.

Mr. BRYANT. Very well.

Ms. RENO. But let the appropriate legal course take its course, and understand that to the extent we can under the law, we will provide complete and full information.

Mr. BRYANT. Well, I take it that the information that you do have in that regard would not have caused you to make any different decision. I was troubled during the course of this crisis about the many ad hoc statements being attributed by the press to FBI personnel, perhaps to ATF personnel as well, and am curious to know what the policy is in the Justice Department regarding people presuming to be spokesmen or sources of information for press reports.

One of the early reports was that the FBI wanted to go in but "Washington won't let us." Do you know who made that statement?

Ms. RENO. Never heard that statement and don't know who it was.

Mr. BRYANT. You did not read it?

Ms. RENO. No, sir.

Mr. BRYANT. It was published. I read it. Would it have been appropriate or is it appropriate for an FBI agent to have said that? Would it be inconsistent with policy for an FBI agent to be making those statements?

Ms. RENO. Again, you would have to talk to the Director about the policy of the FBI. I want people to be frank and open, but during a pending matter of this sensitivity, I think such discussion should not take place.

Mr. BRYANT. One of the early reports as well was that the Waco newspaper was to blame for the tipping off of the people in the compound prior to the attack on the compound, or the attempt by the ATF to carry out the arrest warrants. Would that kind of statement have been consistent with the departmental policy?

Ms. RENO. No, sir. Again, let me hasten to point out to you in terms of departmental policy, because as I indicated previously in response to a question, I am waiting for my Deputy Attorney General to get confirmed before we try to spell out policy on a number of issues, but in terms of trying to respond for what my personal policy is, that would not be consistent with my personal policy to blame the newspaper.

Mr. BRYANT. Well, I suppose it is not only the content of the comment, but the type of comment. It occurs to me it would be much better in the long run for the image of the agency, as well as the Department, if people were asked to let the Department, the Director of the FBI, or some designated person to be the spokesman

rather than having a whole variety of comments attributed to a whole variety of unknown sources. Is that the policy?

Ms. RENO. My policy is you don't comment on pending investigations.

Mr. BRYANT. I hope you will enforce that policy whether it is with the FBI, or the U.S. attorneys, or any other part of the Justice Department. It has not been enforced in the past.

Ms. RENO. Let me—

Mr. BRYANT. Regrettably.

Ms. RENO. Let me tell you, and the press from Miami can confirm, that my standing comment about pending investigations is no comment. Inevitably there is a balancing act.

We are talking about a pending matter now. I am trying my best to address issues that don't comment on pending cases. It is a delicate balance. But I think in terms of gratuitous comments that don't go to the issue of providing public information to the public, that we should not be commenting on pending investigations and we should not be commenting on prosecutions outside the courtroom except to furnish the public information that is public and that they have a right to know.

Mr. BRYANT. Consistent with that policy, would it have been permissible for one of the agents to come out and say he had walked around the scene of the fire and found three persons who had apparently been shot with a pistol prior to the fire?

Ms. RENO. One of the things that we were trying to do was to let people know that the major question was whether there was anybody who had survived or what the circumstances were, and we were trying. It was a delicate balance, again, to make the most appropriate comments we could consistent with the facts that we had and that didn't in any way—and we tried to work with the Criminal Division closely to make sure we did not in any way conflict with the pending prosecution and the pending investigation.

Mr. BRYANT. The suggestion with regard to child abuse, which appears to be at least subject to question right now, it is not clear to me what the facts are. The comments with regard to the fact that there were bodies in the fire that had been shot and the comments with regard to the Waco newspaper having been to blame—each time these comments appear to be designed to create a public opinion that is supportive of actions that have already been taken by the agency, whether it is the ATF, the FBI or the Justice Department. And each time they were, at least for a period of time, called into question.

Maybe some of them now will be true; maybe not, but I think it is very, very unproductive for this to be taking place. I hope you will enforce that policy and in the future let a designated spokesman tell the public what is going on.

Ms. RENO. We are trying our best in very difficult circumstances and we are going to continue to try our best because I share that concern with you. I think it is important in the aftermath of all of this that we try our best to go through it very, very carefully and present as full and informed information to the public as possible consistent with the pending matter.

Mr. BRYANT. Thank you.

Mr. BROOKS. Thank you very much, Mr. Bryant. The gentleman from Florida, Mr. Canady.

Mr. CANADY. Thank you, Mr. Chairman.

General Reno, it is good to see you here today. We have worked together in the past when I was a member of the Florida Legislature. You were representing the State attorneys in Florida. I am also pleased with your comments today and the strength of your character and in your integrity, which is shown in your testimony here today as well as your conduct. I think that has been demonstrated to the Nation and that is demonstrating something that the people of Florida have known for a long time, so I am very pleased.

I do want to ask you just a few questions now. I want to focus on the plan of action that was presented to you by the FBI for injecting the CS gas into the compound. And, specifically, I want to ask you what contingencies were anticipated. What particular responses were anticipated by those within the compound and how those particular contingencies were going to be dealt with by the FBI?

Ms. RENO. One of the first contingencies was that they would fire and that they would shoot at the agents. So, obviously, the vehicles designed to insert the gas were the CEV vehicles, and they were fairly contained. And the head of the Hostage Rescue Team and the FBI can give you the details on that.

The Bradley vehicles had a more exposed port, and there was a danger through ricochet or a well-aimed shot that the agents' lives in those vehicles could be exposed to danger, so that they were somewhat more withdrawn.

But one of the contingencies that—I said what happens if they shoot—I mean, I considered the .50-caliber gun. I said, what if they shoot the .50 caliber at the CEV? The CEV can stand it. What if the explosives are set off and they dump those? The CEV can withstand it.

We went through that in great detail because I didn't want the agents' lives exposed to danger. And each time I raised a question about this—what about this, what about this—each time it was said the CEV can withstand it.

Then the situation came up, what happens if you suddenly see them in the tower, putting children up against the tower and saying you come any further or you put any more gas in? And they said we would try to pick them off, our snipers are good enough to pick off the people who are holding the children. And I said no, no, no, what if they just have the children—if they can influence the children and they are back in the tower?

At that point I gave specific directions, very specific directions, that they were at that point to withdraw immediately; that they were not to expose the children's lives to danger. And they said, what do we do then? I said we pull back and figure out what to do next.

The contingent—and I was the one who asked it—I said what about the worst-case scenario, if he sets off the explosives or if they get set off accidentally? And we at that point—the feeling was with the powder there, that there would be terrible loss of life. I said, we have got to make sure we have every emergency vehicle in case

that might possibly happen and that was something that we had to consider.

One of the eventualities, because listening to the commander of the Delta Force, the commanders past and present, and all the people who had had experience with gas, there were views that if they had gas masks and if they had clothing on that could cover most of their skin, it might be 8 hours before they would want to come out, that some might stay a day or two if they could get in a bunker or someplace. But our feeling was that more would have come out than came out that morning.

During the course of the morning, I saw—we knew the wind was high, you could see the way the flags were flying. It was a heavy wind and then when I saw the curtain on what I guess is the northwest corner, at any rate one corner, the curtain was almost at right angles. I became concerned because the wind seemed so strong. And I think that they would have to, the HRT would have to comment on whether the force of the wind might have diminished the impact of the gas. But the feeling was that they would start to come out.

Mr. CANADY. Do you know how many people actually came out before the fire started? Did any?

Ms. RENO. I think most of the people came out as the fire started. They can give you the precise timing on when the people were located. One got out and then hid in an area near that tall tank, but they can give you the precise chronology.

Mr. CANADY. Let me ask you, General Reno, something about the HRT, and I realize you don't hold yourself out as an expert on the HRT, but if you could tell us, what are the specific skills and capabilities which you understand were possessed by the HRT which would not be possessed by an FBI SWAT team or some other similar team?

Ms. RENO. That is a good question. I was told their marksmanship, their ability to—their abilities with night sighting and their abilities to control perimeters, to understand with their technology, was superior.

I questioned, I probed on it. Their responses seemed to satisfy me, or satisfied me, that there was a difference in the type of security.

That is a decision, frankly, that I deferred to them about because I don't profess to be an expert in tactical law enforcement and I would refer you to the Bureau on that.

Mr. CANADY. OK, thank you very much.

Ms. RENO. Thank you.

Mr. BROOKS. Thank you very much. Mr. Sangmeister, the gentleman from Illinois.

Mr. SANGMEISTER. Welcome, General Reno, to the Judiciary Committee. I realize you have been sitting there now for over 3 hours so we will try to be merciful on you, but there are a few questions that I would like to have answered.

First, let me say that I generally support everything that you did. If there was maybe one mistake that you did make in this whole proceeding, it is when you offered yourself to resign from the office for the decision that you had made. I think that is being overly generous, and I think you are overly defensive. Until some-

one has stood in the shoes that you are in and had to make that decision, they should not be that critical, and I apologize in some respects for the remarks of our colleague.

There is one thing that has not been talked about too much here. I suppose it is under investigation and you don't want to talk about it either. Apparently, as we understand the facts, there would have been no incident at all had the Bureau been able to get in with the search warrant with the element of surprise. We are talking about a tipoff.

Is that something you can comment on or is that something that is under investigation? And if it is under investigation, is Mr. Higgins working on that or are you independently working on it? Because it seems to me none of this would have happened if they had not been tipped off.

Ms. RENO. I think that that will be a part of the overall review. But I would defer that to Mr. Higgins and I want to make sure that I don't comment on anything that would relate to the pending investigation.

Mr. SANGMEISTER. OK. From our constituents and other people such as the Members of the Congress that knew about this hearing, there has been a lot of rumors about what happened. Maybe this should not be directed to you, but I will ask if you know anything about this.

There is a rumor out there local law enforcement knew fully what the situation was. That they had been in the compound and seen the stash of weapons there. They evaluated whether they were legal or illegal and, in fact, may even have confiscated them and returned them to Mr. Koresh. Do you know anything about it at all?

Ms. RENO. No, I don't. I will refer you to the ATF on that.

Mr. SANGMEISTER. Mr. Frank discussed with you all the different options that you went through and you have been discussing them all morning here. One that is discussed that a lot of people think you could have done, and I would like your comments on. Why not just put barbed wire all around this complex? We have a picture of it here that has been furnished and in that picture it is wide open all around it. Why didn't you just circle the whole area with barbed wire and put a couple of individuals on each end of the compound? I know that is still expensive, but as you have indicated, money was not an object here. Was there any thought about that? If it took a year, wait it out, you have children involved. How do you answer that?

Ms. RENO. I can tell you I asked that regularly, why not a big concrete fence, why not barbed wire, rolls of it, what could we do?

The point, again, was that the Bureau kept advising me that the weaponry they had could fire 3,000 yards and to post anyone within sufficient distance to properly control the perimeter in a situation like that would not render the area secure, would permit these people to leave if they wanted to and escape law enforcement, and would also render the surrounding area and people coming into the area dangerous because they had apparently had sightseers.

I specifically asked that because I kept thinking we could just create our own prison, and the FBI did not feel it would be secure.

Mr. SANGMEISTER. We accept that answer and I think it is probably justified. When you look at the area out there, of course 3,000 yards is a long way.

I have been told there are these type of cults all throughout the United States, and that this may be opening up a Pandora's box as to how we are going to control these things. There are many people who would say these are all religious fanatics and under the first amendment, they have the right to worship as they see fit. They believe that we should not be getting involved at all in this area.

Do you have any thoughts about that as to where we are proceeding?

Ms. RENO. I think if a person or a group has not violated the law, that we certainly should not get involved, and I think that we should take a measured response based on the evidence in the law. When we have evidence that they have violated the law, we should take appropriate precaution, No. 1, to effect a prosecution, and to effect, to the extent humanly possible, based on the seriousness in the case, an appropriate response to secure their apprehension.

Mr. SANGMEISTER. Obviously, you are referring to the cache of arms that was there. But there are a number of people, enough NRA advocates, that would tell you you can go into a lot of people's homes and find caches of arms that are very close to what you found here. They wonder whether or not that should be the deciding factor as to whether we should go in these compounds. That is all I have, and I will yield back the balance of my time, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Sangmeister, and the gentleman from Virginia, Mr. Bob Goodlatte, is recognized.

Mr. GOODLATTE. Thank you, Mr. Chairman.

General Reno, I also welcome you here and I too applaud your willingness to come and answer our questions and also your forthrightness from the outset. From the very beginning, you have been willing to stand up and take responsibility for your decisions. But, I think most of us here understand that there is a big difference between taking responsibility for reasonable decisions and the ultimate blame for the outcome in this matter, which is clearly resting at the hands of Mr. Koresh and his immediate circle of people who made outrageous, insensible decisions from the outset.

I am concerned about the fact that this type of situation could definitely occur again. and some of the things that were done in the process do raise some questions. I wonder if you have some views on the relationship between the various law enforcement agencies involved here. Those questions were raised by the gentleman from Michigan, whose assessment of the situation I do not share, but I do think he raised an interesting point, which has been commented on by others. That is, could this be handled more effectively? Was there any disability on the part of the FBI, for example, in having to take over in the middle of a situation caused by two agencies in two different departments of the Government sharing jurisdictions?

Ms. RENO. One of the things that I have stressed is that I really cannot comment on what led up to it because it was a different department and it would be presumptuous of me to comment.

Let me just discuss historically my experience, after 15 years in Dade County, and I shared this with the members of the Senate Judiciary Committee, I abhor turf wars and problems that develop in law enforcement because of lack of coordination. And I pride myself on those 15 years, for the most part, just having excellent working relationships with all law enforcement agencies and trying to avoid those conflicts.

I am also concerned about duplication of efforts in a time of extraordinarily limited resources at every level of government. So what I am committed to trying to do with every fiber in me is develop a real partnership between everybody concerned—State, Federal, local law enforcement—that avoids duplication, that ensures coordination, and that basically says there is too much to be done for us to worry about turf wars, and each of us can play a role if we work together effectively on it.

Mr. GOODLATTE. Have you spoken with Secretary Bentsen regarding that very matter?

Ms. RENO. Yes, and that is one of the things that we would like to address as part of the overall effort, as to how we can ensure the most effective coordination possible of law enforcement efforts on the part of the U.S. Government.

Mr. GOODLATTE. Given the overlap of criminal activities on the part of people who may violate ATF laws and may violate other laws covered by the FBI or the Immigration Service and others, do you have an opinion that these agencies should be consolidated in the Department of Justice? Specifically, should ATF be there?

Ms. RENO. I used to sit off in Miami and look at the Federal Government and wonder about the multiplicity of agencies, and I am not talking ATF versus the FBI versus anybody else, and wonder if it could not be done better. It would be presumptuous of me to be the new kid on the block in Washington and suggest to you that I have any particular structure. All I think is that the American people are entitled to the most effective coordination possible of limited resources without duplication that does as much as it possibly can to get to crime in America.

Mr. GOODLATTE. Do you know if the FBI encountered any difficulties as a result of having to take over in the middle of the situation? Was there a problem with their not being fully briefed on the background? The ATF, after all, had been investigating for many, many months before February 28.

Ms. RENO. Again, I would defer. I think that ATF worked with us and it would be better to let the people who were at the scene talk about it. Inevitably, when one agency has been handling something and another agency takes over, there is a transition.

Mr. GOODLATTE. I am also very concerned that in these types of situations, the element of surprise is absolutely critical. My understanding is that the ATF feels they needed just 1 minute of surprise to get in there and disarm these people. But it is clear from what happened that the cult members were fully apprised of their imminent arrival because the estimates were it would have taken them 15, over 20 minutes to set up the "welcome" that they gave to these agents when they arrived in these cattle trailers apparently.

Every window on the front of this compound was armed with people with semiautomatic weapons. And I wonder if you, in the process of your review of this situation, intend to include a review with regard to what kind of communications they have with members of the media and other people in advance.

We certainly respect the media and their coverage of these types of events. But secrecy in carrying out these operations is absolutely essential. Inadvertently things may happen, and may well have happened in this instance—with the fact that the mailman, the letter carrier, apparently having contact with this cult, even possibly being a member. There was contact with people outside on the road, members of the media, who may have been alerted to this situation and how imminent it was, based upon the fact that they were out looking for a story.

Ms. RENO. The agencies under my jurisdiction are constantly going to be asked to revisit issues to see what they can learn from problems that have existed in the past, and we have been in the process of doing that and we will continue to.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Jack Reed, the gentleman from Rhode Island.

Mr. REED. General, I want to commend you for your candor and integrity not just today but throughout a very difficult crisis. You were called upon to make difficult decisions, decisions which many people shrink from. You didn't. You discharged your duties conscientiously, you were sensitive to the children in the compound, and showed great fidelity to the people of this country.

As we go forward, we all recognize that we have to learn from this situation. I would like to focus my inquiry on a specific set of decisions.

Once the decision was made to force the issue, then it became a situation of how best to accomplish that tactically. It appears from your testimony that there was uniform consensus that tear gas would be an effective means of doing that. I note in your own testimony that the Delta Force advisers, General Schoomacher and Colonel Boynkin, suggested it be introduced in overwhelming amounts quickly. Rapidly. I would presume to not only upset physically but to, just the shock value of such an event.

That recommendation was rejected for a more phased approach, which starting at 6 a.m. in the morning until 12 noon when the fire began giving 6 hours in which plans could have been hatched to incinerate the compound or prearranged plans could have been put into effect.

In retrospect, and not in the sense to assess any responsibility but to look forward, could you elaborate on the advice you received from Delta and why that advice was not followed for a more comprehensive approach?

Ms. RENO. We discussed it at length, and both the head of the Hostage Rescue Team was there, the FBI; and it was a good and frank discussion with the Delta Force on what would be the appropriate way to proceed.

The more measured approach, again, went to the fact that we hoped they would not panic and would come out in an orderly way. That is what precipitated our decision. Ironically, once they fired, the FBI did not return the fire but the FBI then began to insert

the gas almost immediately and so, in effect, Delta Force's recommendation was carried out.

Again, and the Bureau will have to go into the details of it and what they have been able to find, but I think that wind had an effect in just blowing it through so that it reduced the impact that we had anticipated.

Mr. REED. Let me ask another question, General. Given the uniform belief that Koresh would not surrender, was there as part of this plan or at least discussions of physically entering the compound with agents to disarm and arrest or evacuate the people inside?

Ms. RENO. I gave some thought to just putting everybody in a tank and sending them in and felt that just to go roaring in you would still expose the children's lives to danger. Possibly, you would have a horrible cross fire in the middle of the building.

One of the things that I kept grappling with was what do we do in this situation? How do we get the children out? What can we do if there is some kind of an emergency? And it was one of the more difficult issues I had to grapple with because I could not see a way to get those children out without exposing the agents' lives to terrible danger.

Mr. REED. Again, in retrospect and this has been asked before, but you seem from your responses to be comfortable with the decision to use an incremental approach and to hope that reason would prevail over the lack of reason, and I still presume you feel that same way?

Ms. RENO. Again, as I explore everything that we have done to date, what we need to do is talk with people to see if there are other behavioral scientists, religious experts, or somebody else—and it will be interesting and important for us—because we may be able to develop an understanding of what expertise was specifically necessary to deal with Koresh, though we will never know. The next time it may be a different cult and a different cult where there is another approach. So it may be that we will have to develop a cadre of different types of applied human science. I just, at this point, don't know the answer.

I know that we struggled with it in the hindsight of the last 10 days or so. Nobody has given me an alternative. If I didn't know what was going to happen, that would have really addressed the problem.

Mr. REED. Thank you, General, for your testimony and for your service. Thank you very much.

Mr. BROOKS. Thank you very much, Mr. Reed. Mr. Robert Scott, the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman, and General Reno, I appreciate your patience.

I wanted to make a comment first and join in the concern that has been expressed, that there seems to be some question as to whether we had the capability to indefinitely surround this compound because we had only one force, and they were getting tired—Mr. Chairman, is that my warning light already? Thank you—that we did not have the capability of staying around indefinitely; that we were getting tired and that, obviously, that is a concern.

I think I heard you say in response to another question in terms of tipping off the media before you make an arrest, did I understand you to say you did not do that in Florida?

Ms. RENO. I tried every way—if the media came to me and said, we want to cooperate with you and let us go in, I would say, no, that is not my style. Inevitably, the media would sometimes, through observation and others, find out about it, but I tried to have a policy in my office that the media did not go along on warrants that our office had anything to do with.

Mr. SCOTT. My reaction to that is I appreciate that because it seems to me some arrests are made in such a way to inflict embarrassment or to develop media and not to efficiently effect the arrest. It seems to me that might have gotten in the way and created the situation that we were in here.

Do you have any information that one law enforcement agency had information that was not available to the ATF?

Ms. RENO. I don't know. You would really have to talk to the ATF about that.

Mr. SCOTT. Because of that response I want to associate myself with the comments that others have made, that there may be some value to coordinating all the arrest powers into one agency, because you have two Cabinet Secretaries—the ATF does not report to you at all; they are not in your chain of command.

Ms. RENO. Not in my chain of command, but, again, one of the things I want made clear, I assume that the U.S. attorney's office in Texas was involved in obtaining the warrant.

Mr. SCOTT. I think if we had better coordination, perhaps the FBI makes the arrest for every other agency when they find laws that have been broken, they refer to the FBI to make the arrest, perhaps that could be done with the ATF.

Another area, that is on the tear gas that was used, what were you told about the—you were told the tear gas that was selected was not lethal. What were you told the effect of the tear gas would be on people?

Ms. RENO. That their eyes would run; their nose would run, it would be very uncomfortable; they would have tightness in their chest. I specifically asked, does that mean a heart attack? No, it goes again to the tissue issue. That they would—some people could stand it longer than others; that if they had their gas masks on and clothing covering their hands they could stand it longer, but that it was a particulate as opposed to a gas, and it would settle in the room. As they walked around the room it would get stirred up and get into more corners of the room, if you will; that as they tried to drink, taking off their gas mask, that would become more uncomfortable.

I specifically asked about the issue of permanent harm to anyone, particularly children and particularly infants. And as I indicated previously, went to great lengths to try to talk to the doctor and did talk to the toxicologist to conclude that it would not produce, based on any case study that had been done, permanent harm.

Mr. SCOTT. Statements have been made in the press that this particular gas that was selected had been banned from military use?

Ms. RENO. I don't know. I had not heard that. I specifically asked both the Delta commanders and the Hostage Rescue Team if this was—they said this was the gas that was used when they were—apparently I was told that every officer, I mean every soldier in the Army is gassed at least once a year, or on a regular basis, and apparently it varied from unit to unit, but I don't know any of the circumstances concerning whether it is banned.

Mr. SCOTT. After the holes had been poked in the wall, it was your expectation that there would be some time delay in between where they would have the opportunity to assess the situation and hopefully get out before the gas had been released; is that my understanding?

Ms. RENO. What happened on that morning as they went through it, they inserted gas for about 2 hours. Then there was an approximate—and they can give you the precise time frames on it—when they pulled back and did not gas and waited and tried to get the people to come out by explaining come out, walk out the front door, come down the road.

Then, after that period and there seemed to be no response of any kind, they proceeded again.

Mr. SCOTT. Did they have any way to know whether or not people had panicked because of the reaction to the gas?

Ms. RENO. They could see movement in the building and based on what they could see, as I understand it, and they can give you more details, there did not appear to be any sign of panic. And when they came out to pick up the telephone there, the one person did not appear to be panicked.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Scott.

Mr. HYDE. Mr. Chairman.

Mr. BROOKS. Mr. Hyde, gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I have a motion and a request to make, and if I may be recognized for the motion first.

I move that all of the members of the committee be permitted to submit questions in writing to the Department of Justice, the Federal Bureau of Investigation, the Department of the Treasury, and the Bureau of Alcohol, Tobacco and Firearms concerning the events in Waco and that those questions and responses be made a part of the official hearing record with the understanding that any information that is prosecution-sensitive may be exempted?

Mr. BROOKS. In other words, members could request any relevant information that would not compromise any prosecution or other law enforcement activities?

Mr. HYDE. That is perfectly acceptable to me. I move that.

Mr. BROOKS. Without objection, the motion is agreed to and the gentleman is recognized for another couple of minutes.

Mr. HYDE. Thank you, Mr. Chairman. I would respectfully request that you, on behalf of the committee, ask the various agencies involved here to provide the following documents to the committee for inspection by any member of the committee or his or her designee, and again with the caveat that any of these documents that might compromise a prosecution then pending would be exempted. And here is what I would request:

Transcripts of communications within the compound obtained through FBI listening devices; transcripts of any phone conversations between individuals within the compound and any other parties during the time period in question; any and all documents relating to conversations or meetings with current or former members of the Davidian organization; the identity, affiliation and qualifications of all individuals inside or outside of the FBI or the ATF who gave advice, background information or guidance on how to proceed against the Branch Davidian sect or strategies on appropriate methods to resolve the standoff, including but not limited to behavioral scientists, psychologists, psychiatrists, psycholinguists, trained theologians, cult specialists and other especially trained persons or military personnel; any information on child abuse, including specific dates, times and locations where the abuse is said to have occurred, witnesses to the conduct and the nature of the abuse; and existing guidelines or policies, if any, for the Department of Justice, the Department of the Treasury, the FBI or the ATF on media presence at the execution of a warrant or other law enforcement actions.

And, Mr. Chairman, it is my hope that you would request that as an official request on behalf of the committee, that you would provide a repository for this information and make it accessible at reasonable times to all Members or their designees, again, exempting anything that might compromise a prosecution. I think that would provide us with a fuller and dare I say more relaxed opportunity to learn what happened other than this tension-filled morning we have gone through.

Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much. I now recognize Mr. Xavier Becerra from California.

Mr. BECERRA. Thank you, Mr. Chairman, and thank you, Madam General, for being here.

I only have one question, but before I ask the question I want to say I am very pleased to hear many of your remarks and your explanations for some of the questions that have been posed to you.

Obviously, any time that a situation occurs, it is important for those of us who are in government to have an opportunity to explain it to our constituents very well, and it is important for you to be here, whether it is Waco, TX, or Wounded Knee, I think the Government must be accountable to the people and we must be able to explain what went on.

The only question I would ask you—given there were so many questions already asked—is: Given your strong support for preventive approaches to resolving problems—and I am pleased in the chances I have had to discuss this with you that you seem to focus so much on prevention versus trying to remediate a problem—what do you think that we will glean from this that will help in terms of preventing a situation like this from occurring, and perhaps you can expand a bit on what your philosophy is with regard to prevention of this type of criminal activity?

Ms. RENO. Well, having been in situations where I have never met a person who was a victim of a crime that would rather have had it, rather have had it prevented, I have gotten in the habit over the last 15 years in looking at prevention and what can be

done. And I think my meeting with Congressman Hughes was a good first step in trying to explore what we can do with respect to cults where children are involved; to address the issue of child abuse and the problems associated with that, abuse in all its forms, because some of the information that comes back to us is that after a child is in a cult situation for any length of time, there may be permanent damage to that person.

We have to work through it, understand it. The mystery of the human mind and all sorts of forensic issues have been one of the great puzzles of the last 10 years, as we learn more about it. And what I want to do is, again, try to talk to every expert that we can through the processes that we will develop, that we develop to make sure that we have as much information as we can.

Mr. BECERRA. Your response raises another question in my mind. Do we know how many of the individuals were, say, perhaps beyond the age of 40 in the compound?

Ms. RENO. The FBI may have the information. I am sorry, Congressman, I don't.

Mr. BECERRA. It seems most of the individuals were either of a younger age or what might be considered young adults and not yet past a particular age, 40 or so. I don't know if it is worth examining but it seems to me along the lines of what you just said, that there might be something to that, that a lot of young minds are being influenced in negative ways and perhaps it is important for us to be there to provide resources to young people, children, at an early stage rather than wait until we find their minds are polluted with a lot of information that causes things like this to occur.

Ms. RENO. Absolutely.

Mr. BECERRA. Thank you very much. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you, Mr. Becerra.

I want to thank you very much, General. You have been very gracious, sympathetic, and long suffering as we went through this, but we enjoyed having you. I hope you will come back under more auspicious circumstances.

Ms. RENO. Thank you very much.

Mr. BROOKS. Thank you. The committee will stand in recess until 2:30. We will hear from Mr. Higgins and Mr. Sessions and then have questions for the two of them.

[Recess taken.]

Mr. BROOKS. The committee has reconvened.

Raise your right hand, please, sir. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Mr. HIGGINS. I do.

[Witness sworn.]

Mr. BROOKS. Our second witness is the very distinguished Director of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms, Stephen Higgins. He has held his current position for the past 10 years. His career with ATF began in 1961, some 32 years ago.

Mr. Higgins, we thank you for joining us, and we look forward to your statement. You may begin.

STATEMENT OF STEPHEN E. HIGGINS, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY DAVID C. TROY, CHIEF, LAW ENFORCEMENT INTELLIGENCE DIVISION

Mr. HIGGINS. Mr. Chairman, members of the committee, we thank you for this opportunity to discuss the events in Waco.

Accompanying me here today is Mr. David Troy, Chief of our Law Enforcement Intelligence Division.

I know that all of you recognize that in the interest of a fair trial for the defendants in Waco, there are some things that I simply cannot say today on the public record. I also cannot fairly draw conclusions about our activities and decisions in advance of the independent inquiry that will be conducted by the Treasury Department.

Frankly, there are also some answers that I simply don't have for you. While we are meeting, investigators are still sifting through the ashes and talking to the survivors.

Statements by our agents concerning the events of February 28 are in the hands of the Texas Rangers and the prosecutors. These will all ultimately become public. They are not public now because they are integral to the investigation of and fair trial for the suspects accused of murdering 4 and injuring 15 ATF special agents.

This is a time of both great sadness and challenge for ATF. We mourn Todd McKeehan, Conway LeBleu, Rob Williams, and Steve Willis, and we look toward the continued speedy and healthy recovery of those wounded in the line of duty on February 28. We do this as we grieve for those children who, through no fault of their own, perished in the arson fire that swept through the Davidians' compound on April 19.

This is also a time of questions: What happened? Why? What could or should have been done differently?

You all have copies of the affidavits that have been unsealed in this case, so you know at least some of what ATF discovered in its investigation of the Branch Davidians.

In one sense this tragedy began in 1987 when Vernon Howell, also known as David Koresh, seized control of the Mount Carmel complex. Detailed are the practices he initiated, his spiraling interest in weapons, the efforts he made to obtain them and some of his clear messages that he and his followers were bound together in a vision that promised them all, and others who were in their path, death.

Vernon Howell and his followers were like a bomb waiting to go off. No law enforcement agency made them do what they did. At huge risk and cost, we did what we could to intercede.

Now the tragedy enters what will hopefully be its last but probably most crucial phase, and that is the review to learn how we might better approach such potentially violent situations in the future. The men and women who carried out this operation, in each agency involved, possessed courage, intelligence, experience, and skill, but they were forced to extrapolate from previous situations, which, although they may have been similar, were not identical to this one. In that respect, it may well have been a seminal event in which there were no clear or easy answers based on past experience.

In the 18 months prior to the Branch Davidian incident, our ATF special response teams had carried out 341 actual activations to high-risk situations. Going back to the Covenant, the Sword and the Arm of the Lord investigation in 1985, we have investigated and carried out operations against sects and survivalists as diverse as the Lungren family, responsible for a group of murders in Ohio, to the original arrest of Randy Weaver, currently on trial in Idaho.

Given the magnitude of this operation and the loss of life involved, it is almost certain that we will find things that could have been done differently and probably better. What we learn from this operational review may well result in rewriting the book on handling similar situations in the future.

The purpose of this hearing and the departmental review is to bring an independent perspective to this process, and I know that I join all the men and women of ATF in our desire to facilitate this oversight in any reasonable way possible, regardless of the ultimate findings. If avoidable mistakes were made, we need to learn and benefit from them, or we will have added a second tragedy to the first.

Four of our people died in the initial raid at the Apocalypse Ranch. Over 4,000 of them are involved in current investigations and operations. At some point in many of these investigations, there will be life-threatening risks. A few of these cases involve people committed to violent confrontational philosophies, so the potential for future confrontations is more than just an outside possibility.

As a bottom line, however, it remains our responsibility to deal with the Vernon Howells within the laws, the systems, and the capabilities we have as best we can. That means we have to find ways to protect the Todds, Steves, Robs, and the Conways who carry out our missions. It does not mean that we can abandon the mission of dealing with those who threaten themselves or others. And at the proper time, I will be happy to respond to any questions you or the committee may have.

Thank you.

Mr. BROOKS. Thank you very much, Mr. Higgins.

Our final witness is the Honorable William F. Sessions. Raise your right hand, Judge. Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SESSIONS. I do swear.

[Witness sworn.]

Mr. BROOKS. Be seated.

Judge Sessions is now the Director of the Federal Bureau of Investigation. He has served in his current position since November 1987. Before assuming his directorship, he was a Federal district judge for the Western District of Texas. He first joined the Department of Justice in 1969 as Chief of the Government Operations Section, Criminal Division.

Accompanying the Director is Floyd I. Clarke, Deputy Director, who has served in this capacity for several years and took a lead in monitoring the Waco standoff for the Bureau.

Judge, you are accompanied by some other gentlemen. If you will give their names and positions, we will be delighted to have you. You may proceed.

STATEMENT OF WILLIAM S. SESSIONS, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY FLOYD I. CLARKE, DEPUTY DIRECTOR; LARRY POTTS, ASSISTANT DIRECTOR OF THE CRIMINAL INVESTIGATIVE DIVISION; JEFF JAMAR, SPECIAL AGENT IN CHARGE, SAN ANTONIO DIVISION; BOB RICKS, SPECIAL AGENT IN CHARGE, OKLAHOMA; DOUG GOW, ASSOCIATE DEPUTY DIRECTOR FOR INVESTIGATIONS; AND DICK ROGERS, ASSISTANT SPECIAL AGENT IN CHARGE, WASHINGTON METROPOLITAN FIELD OFFICE, AND COMMANDER OF THE HOSTAGE RESCUE TEAM

Mr. SESSIONS. Thank you, Mr. Chairman.

On my immediate right is Larry Potts, who is the Assistant Director of the Criminal Investigative Division. On his immediate right is Jeff Jamar, who is the SAC, Special Agent in Charge, of the San Antonio Division, who is in charge up in Waco. On his right is Bob Ricks, who is the SAC of Oklahoma, who was also assisting Jeff Jamar. Back in the back row immediately behind me is Doug Gow, who is the Associate Deputy Director for Investigations, and on his right is Dick Rogers, who is the Assistant Special Agent in Charge of the Washington Metropolitan Field Office, but is the Commander of the Hostage Rescue Team.

Good afternoon, Mr. Chairman, and members of the committee. As with the Attorney General, I am here to provide as much information and as many facts as I can about the long standoff and the tragic ending in Waco, TX.

Toward that end, I have with me the officials who I have introduced. They represent every aspect of the FBI's operation in Waco. They are, of course, available here today to answer your questions.

I would like this afternoon to offer a few brief comments. I have submitted a lengthy statement which I ask be included in the record, if it may be.

Mr. BROOKS. Without objection, so ordered. The gentleman will proceed.

Mr. SESSIONS. Following my comments and my remarks, I will ask Mr. Clarke to briefly walk the committee through the 51 days that we were in Waco at the compound, using the pictures that you have before you.

Following Mr. Clarke's comments, if I may, I will then address some of the more significant issues that have come to the forefront following the end of the siege.

Let me begin as the Attorney General did, that is, with the questions: If we knew then what we know now, would we have gone forward as we did? The answer really is that we would never and do never have that luxury.

Obviously, we would not have taken any action we believed would have triggered Koresh to take the lives of the children in that compound, but no one, none of us ever has the benefit of hindsight. Decisions then were made and based on what was known at the time and based on what was known at the time, we elected to

continue with the plan, that is, to continue to incrementally increase the pressure on Koresh to negotiate and to peacefully leave the compound.

Let me back up for a moment. Almost immediately after the initial raid occurred on Sunday, February 28, I called ATF Director Steve Higgins and announced—pardon me—and offered to him the services of the FBI including those of the Hostage Rescue Team. He accepted, and I ordered that the necessary resources be deployed in Waco.

When we arrived, what we found was a heavily armed compound controlled by a man who had caused the death of four agents of the Bureau of Alcohol, Tobacco and Firearms. For the next 51 days, we tried everything we and the outside experts we consulted could think of to get those people, especially the children, out safely. We interviewed family members of the Davidians around the world, looking for insight on how best to proceed, on how to reach those inside.

During the weeks before the fire, we gradually maneuvered closer and closer to the building until we were bumping up against the walls of the compound. Every negotiating effort from sending in videotapes from family members and milk for the children to allowing Koresh's lawyers inside the compound, brought nothing from Koresh, no results.

After 51 days, we were to the point that if pressure to come out was to be increased, it had to be done inside the compound. From a tactical standpoint, we believed there was nowhere else to go.

Up until that point, we had spent 51 days of having our agents in harm's way, facing weapons that, as the Attorney General pointed out this morning, were of great high power and could shoot through 6 feet of sandbags.

For over 7 weeks conditions had been deteriorating inside the compound, with dead bodies decomposing and sanitary conditions worsening. All that time Koresh was fortifying his sniper positions, filling sandbags, making gun ports from which to fire, and increasing the danger to everyone both inside and outside the compound.

Our theory throughout the process was to gradually, incrementally constrict the area under the control of Koresh. It was, in effect, to make sure Koresh and his armed followers inside knew that they could not prevail over the lawful authority of the Government, while at the same time trying to avoid another bloody shootout.

Our goal was simple: Meaningful negotiation for the lives inside. When the decision was made to go one step further, that is, to intrude with tear gas into the compound, it came only after intense questioning, extensive consultation, and intricate planning. At that moment, I was satisfied that putting tear gas into the compound was the next logical step.

It would be unthinkable to believe that we are satisfied with the outcome. There could have been no more horrible nightmare than that which was unfolding that day before our eyes.

When fires were set in the compound, we found ourselves helpless to save the very children we had spent over 7 weeks trying to save. We pleaded with those inside to come out. We had made openings so that they could. For whatever reason, only a handful

came out. It was a devastating end, crushing the hopes of the Hostage Rescue Team whose motto is to save lives.

There were moments of extreme heroism. After the fires were started inside and in the face of exploding ammunition, Hostage Rescue Team members abandoned the safety of their armored vehicles to save a man who had caught fire on the roof and to pull two women out of the burning compound. Members waded into the bunkers waist deep in water, water filled with human waste and infested with rats to reach buried bunkers in the hope of finding the children. Had they been there, they would have been alive. They were not.

I have been over this many, many times, searching for mistakes that led to this tragic end. If there was one, it was not made by those Hostage Rescue Team members and others on the scene who for 51 days bravely faced the hundreds of high-powered weapons and millions of rounds of ammunition Koresh and his armed followers possessed. I believe they and everyone involved acted with incredible professionalism, skill, and restraint, never firing a single shot even in the face of hails of gunfire.

Maybe we should have taken this step sooner. However, the mind of a man who would willingly burn up his own children may be beyond comprehension. It is possible that the outcome was inevitable. The only question was when it would happen.

Finally, I am asking the American people not to forget the four ATF agents who were slain, their families and their children. In the line of duty, they made the ultimate sacrifice to uphold the laws of the United States. While we are all horrified at the outcome, we are a nation founded and supported in law, and no one individual is entitled to dictate whether or not the law applies to him.

I will now ask that Mr. Clarke quickly walk the committee through our tactics and what we did during the 51 days in the compound. We have placed a model over here on my left and also have the two photographs that are duplicates of what you have in front of you. [See appendix 1.]

Mr. Clarke.

Mr. CLARKE. If you will permit me, Mr. Chairman.

Mr. BROOKS. Do whatever you need to do, Mr. Clarke.

Mr. CLARKE. The HRT was developed in 1983 because of the FBI's concern about the U.S. Government's law enforcement capability to deal with domestic problems that were occurring around the world involving terrorism, and as we looked at how it was being handled in other countries, it required in many cases a military type of reaction. And so to try to deal with that problem in the United States, the FBI began the development of the Hostage Rescue Team. It is the only component of law enforcement in the United States of its kind.

These people train every day. It is not a part-time program. When they were called upon in this instance to respond to this mission, as the Director mentioned, their objective was to save lives.

There have been many stories that have been out in the public about what happened and why it happened and how this program was developed. We continually hear it referred to as an assault.

Our plan began on February 28, and it was continuing on April 19. It was not designed because the people were tired; it was not designed at the last minute where we went in and dropped a proposal on the desk of the Attorney General. We were continuing to consult with the people in Waco, keeping the people at the Department of Justice advised of the developments.

I can't tell you the saddened quiet that permeated the command center at FBI headquarters in Washington, DC, on Monday afternoon, April 19 when we saw the flames begin to come from that building. We could not believe that this would be done, and I remember the silence and I remember seeing an individual climb out of the window and was on the roof laying there, and there were voices inside the compound, "Jump off, get off," and I know that the Hostage Rescue Team and their Bradley vehicles had attempted to maneuver up and talk to him through a loudspeaker system to give him a place to come down, and he laid there as he was being consumed in flames and eventually rolled off of the building. The members of the HRT got out of their vehicle, went over and put out the flames and put him on the back of the vehicle and removed him to safety.

There were other stories, as the Director talked about. One woman who came out of this burning building, an HRT member got out of the vehicle, went to try to get her and she ran back into the flames. She was pursued by the Hostage Rescue Team member. When he grabbed her, she was trying to fight him. He put her down on the ground, put the fire out, and she also was removed to safety.

When our Hostage Rescue Team arrived on the scene on February 28, there were only two places that we could get to safely. This position here, which is about 275 yards from the compound, and this building out here, which is about 300 yards from the compound.

We immediately set up a command structure at an offsite location a few miles away. That command structure was staffed by four senior special agents in charge of the FBI, all with an excess of 20 years of experience in the FBI. They were supported by teams that came in from our behavioral science unit, from our technical department, from our aviation unit, from our rapid response team, to begin to collect data and analyze it and computerize it.

These people had mirror images working in the command center in Washington, and from that very day began developing a concept which was to try to move in closer while we were negotiating with them to come out, the objective being for there to be a peaceful resolution without any further loss of life, with priority being placed on the children.

This is the way that the facility looked when we arrived on the scene, many cars and buses, the two trucks with the cattle trailers that ATF arrived in, buses over here, out buildings, storage tanks with fuel in them, mounds of building material, all of these things obstructing the view that we had from these two points. Also interfering with the potential for us if we had to go into the compound. These all presented obstacles to us, and so we needed to develop a means to begin to remove that material. Early on, anytime a vehicle from out in this area would make any move that would indi-

cate that it might be going toward the compound, we would get a response from inside the compound, "If you come any further, we will blow those vehicles up."

The military loaned us Bradley fighting vehicles. We intentionally had the barrels removed from these vehicles so they did not present a threat, and offered us the safety and security to begin to maneuver.

On one occasion, David Koresh got on the phone and said that his people were very familiar with the military specifications of a Bradley vehicle and they had weaponry in there that could blow those vehicles 40 or 50 feet into the air. Upon hearing that, we went back to the military and they made available to us two M-1A1 Abrams tanks and also three M-60 combat engineering vehicles.

We initially showed the Abrams tanks to them to let them know, as the Director mentioned, that their Government had the capability anytime that we wanted to, we could drive right into that building. We didn't because we chose not to do that. We chose to try to find a way to peacefully resolve this.

We talked to David Koresh about sending out the children. His response was, "Children are like hostages, they can't think for themselves." He made all kinds of promises to us. I think if you will recall early on he agreed if we would allow him to make a 58-minute tape, that he would come out. He put a preamble to that tape and announced to the world that that is what his intentions were. He broke that promise.

And what we also learned when one of the people did come out, she told us that the plan was that Koresh was going to have handgrenades strapped to his body and come out and surrender to law enforcement on national TV, ignite the handgrenades, blow himself up and the law enforcement officers that were going to arrest him. We also heard about stories inside about where they were trained for three people to stand around a handgrenade to ignite it so all three people could be taken at the same time.

That is the kind of problems that we were dealing with as well as the kind of weaponry that we saw and knew was inside. So you can see over the 50 days we were not just sitting around thinking about what we were going to do or trying to negotiate with people. All of these vehicles were removed from that area to give us access to the compound.

One thing that we did every time we went to make a move, we would tell them ahead of time what our intentions were. Most of the time they would react verbally not to do it, but we did it anyway. And as the Director mentioned also in his statement, at the very outset we told them what the rules of engagement were. We referred to them as the rules of safety. We don't want anybody to get hurt, stay out of the windows, don't put guns in the windows.

Many times in the early days we could see them using their night surveillance opticals to watch us, and we saw weapon barrels come out of the windows. We didn't shoot them. We told them to take them back in, told them exactly where they were. What did they do? They resorted to recessed firing positions where they would darken out the background where you couldn't see them inside.

We got to a very critical point when we began to take this fence that is along the front of the house away. We were very concerned that they may view that as protection for them because the lower section of it was reinforced, they may use that as shooting positions, and as we began to remove that, we thought that there would be some reaction. There wasn't.

Another very critical time was in this section of the building you can see over in here there were some go-carts and motorcycles and boats, and there was a little patio-like area that—it is over on this side which is right below the window of where the armory was supposedly located and also Koresh's quarters. And if you recall the television coverage of the ATF raid, it was on that rooftop where you see the ATF agent taking gunfire.

When we moved the tanks, the CEV vehicles into that area to remove those obstacles, we were very concerned that that might cause some reaction. The tanks actually banged into the walls as they were removing them. There was no reaction on the inside.

As we were progressing through this plan, we knew that we were getting down to the point where all of these obstacles were removed. The next move was going to be as to how do we begin to reduce the interior of this massive complex to a point where we can begin to constrict and restrict their movement. We considered a lot of options. Some we dismissed immediately—an armed assault, suicidal. What about, somebody suggested in one television coverage that I saw, why didn't they shoot Koresh? We don't believe that that is the proper role for law enforcement to be the judge, jury and executioner.

We also talked about using a water cannon and standing off from a long distance and begin to dismantle the building with a water cannon. Two problems with that—three problems. One is source of water to do that effectively and continually. Two is that they could just as easily put people into the building. And three, and more importantly, the overriding concern was there was no way to do that and provide security and safety for the individual firing the water cannon.

We also talked about systematically beginning to dismantle the building, using the CEV vehicles. That didn't have a very good likelihood because on a number of occasions when we were maneuvering around the building, removing the obstacles, the Davidians would appear in the windows and hold the children up, referred to them as the Kevlar kids. So if we were going to tell them what we were going to do, and we certainly wouldn't start trying to dismantle the building without giving them notice, they would take, we assume that they would take and place the children or others into that section of the building and prevent us from tearing it down. So we had to dismiss that.

So as we were looking at ways, we began to talk about the introduction of gas, and there was a lot of discussion about that. And as the Attorney General said, we were first talking about this back in early April, actually the latter part of March. We briefed the Attorney General and the people in the Department in April about what we were thinking about in terms of the gas.

The Attorney General, as she outlined this morning, asked a lot of questions. Many of the questions we had answers for, many of

the questions we had to go back and do some research and provide people where she could have firsthand access to them.

There was two or three concepts. One was to immediately immerse this area in gas. Two was to do it incrementally. There were pros and cons to both, but we wanted to be consistent all the way through this thing. We wanted to let them know of the Government's resolve, provide a means for them to come out.

One other thing that I might also add, we were concerned what about if there is a mass suicide inside, what were we going to do. This was in the very early stages. Well, first of all, we would be very limited in knowing how that might occur. What if they were going to take poison?

The one woman who had talked to us about the handgrenades also said that they had a means of injecting themselves and she would have preferred to have been injected. How would we know that was going on? We would have no way. Even if we heard gunshots inside, how would we know that they were committing suicide?

However, if, in fact, we had hard evidence that there was suicide taking place inside, there was a plan. The plan was that those military vehicles would enter this compound in strategic locations to provide openings, to distract the people from what they were doing, immediately totally immerse the place in gas, and throw in flash bangs which would disorient them and cause people to at least temporarily stop what they were doing and give them a chance to think if not rationally, at least instinctively, and perhaps give them a way to come out.

On the morning of April 19, we had developed a plan where we were going to—let me just back up one second.

All through the days that we were around here, these tanks were maneuvering around the compound. So in the morning of Monday the 19th, that movement was no different than it was of the other mornings. The plan was to systematically put gas into these lower four windows and then these upper four windows.

However, on Saturday one of the people who had gotten through the perimeter and actually gotten into the building—he was not a cult member, he was a sympathizer who trespassed and was released. He had very limited information about what was going on inside, but he seemed to think from his overhears that there was a possibility that the children may be up in these windows on the second floor, this area right here.

So we changed the plan and decided not to put gas into that first section or that top section first because we didn't want the booms to be going through a window where the children may be sleeping. But certainly once we started this and made the announcement, they would have time to get the children up and move them out.

We also knew that on the 28th of February that there was a shootout that lasted for somewhere between 45 minutes and in excess of an hour. There are all kinds of estimates about how many rounds were fired, anywhere from 4,000 to 12,000 rounds fired. Interesting point, not one child was injured. They had a means to protect the children if they chose to do that.

We were aware that they had a buried schoolbus that was buried right below the surface here. There was a trapdoor from this part

of the building down to the schoolbus. There was a tunnel along this way that went into this bunker.

We were concerned about that area as well, so on that morning before we started anything, we made a telephone call into the compound, and at the same time over the loudspeakers were announcing exactly what we were intending to do. We told them that this was not an assault, this gas is not lethal, we are not coming in, don't fire your weapons, stay out of this tower. We considered this tower to be very, very dangerous to us. This is a shooting and killing tower. They had reinforced this and cut additional shooting ports into that tower.

As we made that announcement, Steve Schneider, who was on the other end of the telephone, threw the telephone out the window and we were met with a barrage of gunfire. We continued to broadcast over the loudspeaker system, telling these people that this is not an assault, don't fire your weapons. We continued to receive fire from 6 in the morning until well after the fire started.

In the process, after putting gas into these windows, there was then gas put into the back area, the gymnasium, and when the gunfire erupted, we fired ferrate rounds of gas into the tower to try to keep them out of the tower.

We also had a period of time from about 9 until about 11 eastern time where there was absolutely no activity by the FBI. We continued to make announcements, continued to ask them to communicate with us. No response.

So we began to insert gas again, and we were met with gunfire as well. And at this time we made some openings in the building where we actually drove the tank in here through this door, through the side of this building and through the back side here to give these people additional ways to exit the building, and in fact we now know that some of the people that came out came out through those openings.

The reason for those openings was, you might have seen on one occasion when the Bradley vehicle attempted to put gas into this doorway, when they pushed in the door, it wouldn't go. They had totally reinforced the doorway. So we were concerned that perhaps they had blockaded all of the exits either to prevent us from coming in, but it certainly then would prevent people from coming out, and that was the reason for putting the areas of exit around the building.

As the fire was burning, there was a lot of discussion about a fire plan, and the people who are here with us can tell you in great detail our conversations with the local fire department. We also have publicly said that there was no way that we were going to allow firefighting equipment and firefighters to be exposed to this gunfire, and when they arrived on the scene they were held until we were sufficiently certain that the risks were reduced sufficiently enough where we could bring them on the scene.

When they came on the scene, they immediately began to spray water in this area, and this is the area where the HRT members got out of their vehicles, waded through waist deep water, human waste, rats, and made their way through this tunnel and into the schoolbus, hoping to find the children. When they got inside the

bus, the air was cool, there was no gas, there was plenty of oxygen, but there also were no children.

They also went to a number of these outlying areas, and there were manhole covers. We were concerned about tunnels or perhaps some other means of exit and examined all of those, and we could find no other means of exit from the compound.

It was a plan that was initially intended to go for several days that if, in fact, they did not come out after this gas was inserted, we would put more gas in, and we would do that over a 2-day period of time.

All of the experts that we talked to, both in the military and our own experts, said that some people will resist. Those who were initially exposed to the gas will come out, but some will resist. But after a period of time even the most well-seasoned military people cannot continue to be in that surrounding, and we expected that after 2 days most of them would come out. Those that didn't would be the hardcore, and at that time we would then begin to systematically take away parts of the building to reduce it down to a section where we could control it.

So this was not a plan where we put in gas, if they don't come out, then what do we do. We had a plan to follow this thing all the way through.

Unfortunately, David Koresh had a plan and he had his own clock running and he chose to initiate it before the people could get out.

Mr. SESSIONS. Thank you, Mr. Clarke.

There has been much speculation about what occurred on April 19 in Waco. It is likely that it will be months before the American public is fully informed. The crime scene must be tediously and carefully processed, the medical examiner and disaster teams must conclude their work, and most important, the criminal justice prosecutions must go forward within the criminal justice system.

There are, however, several issues that I would like to discuss briefly with you. First is the fire contingency plan. There have been many questions raised about whether or not the FBI had a fire contingency plan. The answer is yes. Along with a very extensive medical treatment and evacuation plan, there was a plan for dealing with fire.

Based upon weapons and armament we knew were inside, we believed from the onset that no fire equipment or firefighters could safely be allowed near the compound, even if a fire broke out. The Branch Davidians had .50-caliber rifles with a 3,000-yard range capability that would easily penetrate any fire vehicles. They could cover several square miles with these weapons, as the Attorney General referred to this morning. Numerous other long-range weapons, including assault weapons as well as explosives, would make any approach by firefighters extremely dangerous.

The Waco Fire Department had done a survey of the area early in the standoff after we advised them that their assistance might be needed. When the fire was set inside the compound, an immediate telephone call was placed over the 911 system. That resulted in the dispatch of the Bellmeade, TX, and Waco, TX, fire departments. When they arrived, we could not yet allow them near the

compound because the exploding ammunition made it too dangerous.

Gunfire continued from the compound, even after the fire nearly engulfed the building. Later, the firefighters assisted the Hostage Rescue Team, as Mr. Clarke has pointed out, in cooling down the area on the front left side of the compound so that the Hostage Rescue Team personnel could enter the bunker and tunnels to search for children in the buried schoolbus. Now, as to the use of CS tear gas, when the plan to increase pressure inside the compound was being formulated, the use of CS tear gas was very carefully considered. Based on our own experience and that of the Department of Defense at the Edgewood Terminal, CS gas, which is actually a powder, was selected because it is best suited to be used in the circumstances which we faced. CS is nonlethal and studies have shown it is not harmful to adults or children. It is the safest, most effective tear gas available.

One critical factor was that CS gas can be used without pyrotechnics. It will not start or contribute to a fire. Also, it is the most tested chemical agent in the world and is regularly used by both law enforcement and in military training exercises.

Over the course of the morning of April 19, nineteen 15-second bursts were sprayed into the building and 300 projectiles, which Mr. Clarke referred to as ferret rounds, were used on the windows where the spray could not reach, windows which posed great danger because of their location in the compound.

The question was how did members know that this was not an assault. So that there would be no doubt about our intentions, and what they were on the morning of the 19th, we called into the compound and told them that this was the beginning of what was to be done. It was also announced continually over loudspeakers. To reaffirm that this was not an assault, the barrage of gunfire within the compound was not returned.

The Branch Davidians furthermore knew we had always kept our word to them when we announced what we were going to do.

There have been questions about the fatigue of the Hostage Rescue Team. There is reporting about the physical condition of the Hostage Rescue Team about questions they had spent over 7 weeks under very dangerous and adverse conditions. It was our belief this was pushing the outside of the envelope in regard to how long they should be employed without a resumption of the training necessary to maintain their level of skill. There is only one Hostage Rescue Team, and pulling them out for any purpose would have meant the loss of significant operational, tactical and rescue and medical capabilities, seriously weakening the law enforcement mission at the compound.

The question was: Was the FBI operating "in a vacuum?" It has been raised in the media the FBI did not consult with cult experts, family members of those inside the compound, or others who could have helped us resolve the situation. Actually, the opposite is true. We talked to family members all over the world, sending tapes they made into the compound. We consulted with experts from a variety of fields, including religion, cults, psychiatry and related fields. We examined every offer of advice. Most of the cult experts told us that

law enforcement should leave the area altogether, in essence ignoring Koresh and the others, regardless of their crimes.

Child abuse. There have been a variety of reports about child abuse inside the compound and whether that was a factor in deciding to continue increasing the pressure to bring people out. With unquestionable certainty, it was.

There was substantial information before February 28 that children were being abused. Koresh had children by wives as young as 12 years of age who remained inside the compound. There were documented descriptions of children and infants being severely paddled. There was no reason to think that the pattern of abuse did not continue after the 28th. A psychiatric expert told us it was almost a certainty. In fact, if anything, every passing day increased the risk to the children both from several deteriorating sanitary conditions and the possibility of gunfire.

Why did suicide not seem likely? The possibility of suicide likewise was an issue. We continually considered that possibility throughout the ordeal. This is why we consulted with psychiatric and other experts who told us suicide was not likely—that Koresh would not commit suicide. Koresh himself had indicated that he would not commit suicide. It was discussed with him by our negotiators. There was every indication that Koresh was thinking about the future. He talked about what would happen in the future with us and with his attorneys.

Koresh had been successful in the past in defending himself against charges in the State criminal justice system. He had consulted with attorneys and reportedly discussed book and movie rights to his story. He continued to be very materialistic, expressing great distress about the possibility that his vintage automobile parked in front of the compound might be damaged by the armored vehicles.

There was no indication from any source that suicide was likely with this increase in pressure. In any case, from the beginning, the Hostage Rescue Team planned for the possibility of a murder/suicide. This plan called for using armored vehicles to make escape openings, as Mr. Clarke discussed, into the compound, followed by the insertion of CS tear gas and stun grenades to act as a diversion for those who might choose to escape.

And, finally, the question came, why April 19, why did we not wait longer. There is no simple answer. The 19th was not D-Day. There was no single piece of information that dictated the 19th. There was concern about the increasing vulnerability of law enforcement and the threat to public safety. There was concern about the potential for an armed mass breakout. The risk of injury to agents was increasing and the conditions in the compound were deteriorating. Concern for the children in light of this was increasing.

All of our experts told us Koresh would not come out unless he was forced out. All of our negotiations produced nothing and there was no prospect that it ever would. Thus, it was apparent that the next step in incrementally increasing the pressure on Koresh should be taken. Otherwise, there was no hope of moving forward and toward resolution. We would merely have been postponing the inevitable. April 19 was day 51 of a continuum of steps that had

already been taken to try to have meaningful negotiations. It was the day the next logical step was taken.

Mr. Chairman, I thank you and the committee for your patience and we will be pleased to respond to whatever questions you have, sir.

Mr. BROOKS. Thank you very much, Director Sessions.

[Mr. Sessions' prepared statement follows:]

PREPARED STATEMENT OF WILLIAM S. SESSIONS, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Good morning, Mr. Chairman and members of the committee. Like the Attorney General, I am here today to provide as much information—as many facts—as I can about the long standoff and tragic ending in Waco. Towards that end, I have with me, both at the table and behind me, a number of senior FBI officials. They represent every aspect of the FBI's operation in Waco. They are all available to answer your questions. With me today are: Floyd Clarke, Deputy Director; Doug Gow, Associate Deputy Director for Investigations; Larry Potts, Assistant Director of the Criminal Investigative Division; John Hicks, Assistant Director of our Laboratory Division; Jeff Jamar, the Special Agent in Charge of the Operation in Waco; Bob Ricks, one of the Special Agents in Charge that assisted Mr. Jamar throughout the ordeal; Danny Coulson, a Deputy Assistant Director of the FBI's Criminal Investigative Division and the first commander of the Hostage Rescue Team in 1983; and Dick Rogers, the current commander of the Hostage Rescue Team.

I would like this morning to offer a few brief comments. I have submitted a lengthy statement which I ask be included in the record. Following my comments, Mr. Clarke will briefly walk the committee through the 51 days that we were there, using the pictures you have before you. Following Mr. Clarke's comments, I will address some of the more significant issues that have come to the forefront following the end of the siege.

Let me begin as the Attorney General did, that is, with the question "If we knew then what we know now, would we have gone forward as we did?" The answer is that we never have that luxury. Obviously we would not have taken any action we believed would have triggered Koresh to take the lives of the children in that compound, but no one has the benefit of hindsight. Decisions were made based on what was known at the time and based on what was known at the time we elected to continue with the plan, that is to continue to incrementally increase the pressure on Koresh to negotiate and peacefully leave the compound.

Let me back up for a moment. Almost immediately after the initial raid occurred on Sunday February 28 I called and offered ATF Director Higgins the services of the FBI including our Hostage Rescue Team. He accepted and I ordered that the necessary resources be deployed in Waco. When he arrived, what we found was a heavily armed compound controlled by a man who had caused the death of four agents of the Bureau of Alcohol, Tobacco and Firearms. For the next 51 days we tried everything we and the outside experts we consulted could think of to get those people, especially the children, out safely. We interviewed family members of the Davidians around the world, looking for insight on how best to proceed, on how to reach those inside. During the weeks before the fire we gradually maneuvered closer and closer until we were bumping up against the walls of the compound. Every negotiating effort from sending in video tapes from family members and milk for the children to allowing Koresh's lawyers inside the compound, brought nothing from Koresh, no results. After 51 days, we were to the point that if pressure to come out was to be increased, it must be done inside the compound. From a tactical standpoint, there was nowhere else to go.

Up until that point, we had spent 51 days of having our agents in harm's way, facing weapons that could shoot through six feet of sand bags. For over seven weeks conditions had been deteriorating inside the compound, with dead bodies decomposing and sanitary conditions worsening. All that time Koresh was fortifying his sniper positions, filling sandbags, making gun ports from which to fire and increasing the danger to everyone, both inside and out.

Our theory throughout the process was to gradually—incrementally—constrict the area under control of Koresh. It was, in effect, to make sure Koresh and his armed followers inside knew that they could not prevail over the lawful authority of government while at the same time trying to avoid another bloody shootout. Our goal was simple—meaningful negotiation for the lives inside. When the decision was made to go one step further, to intrude with tear gas into the compound, it came

only after intense questioning, extensive consultation and intricate planning. At that moment, I was satisfied that putting tear gas into the compound was the next logical step.

It would be unthinkable to believe that we are satisfied with the outcome. There could have been no more horrible nightmare than that which was unfolding before our eyes. When fires were set in the compound we found ourselves helpless to save the very children we had spent over seven weeks trying to save. We pleaded with those inside to come out. We had made openings so that they could. For whatever reason, only a handful came out. It was a devastating end, crushing the hopes of the Hostage Rescue Team whose motto it is "To save lives."

There were moments of extreme heroism. After the fires were started inside and in the face of exploding ammunition, Hostage Rescue Team members abandoned the safety of their armored vehicles to save a man who had caught fire on the roof and to pull two women out of the burning compound. Members waded into bunkers waist deep in water—water filled with human waste and infested with rats—to reach buried bunkers in hope of finding the children. Had they been there, they would have been alive. They were not.

I have been over this many times, searching for mistakes that led to this tragic end. If there was one it was not made by those Hostage Rescue Team members and others on the scene who, for 51 days, bravely faced the hundreds of high powered weapons and millions of rounds of ammunition Koresh and his armed followers possessed. I believe they and everyone involved acted with incredible professionalism, skill and restraint, never firing a single shot even in the face of hails of gunfire. Maybe we should have taken this step sooner. However, the mind of a man who would willingly burn up his own children may be beyond comprehension. It is possible that the outcome was inevitable, the only question was when.

Finally, I am asking the american people to not forget the four ATF agents who were slain, their families and their children. In the line of duty they made the ultimate sacrifice to uphold the law of the United States. While we are all horrified at the outcome, we are a nation founded and supported in law and no one individual is entitled to dictate whether or not the law applies to him.

Mr. Clarke now will quickly walk the committee through our tactics and what we did during our 51 days at the compound.

DEPUTY DIRECTOR CLARKE WALKS THROUGH SIEGE

There has been much speculation about what occurred in Waco on April 19. It likely will be months before the American public is fully informed. The crime scene must be tediously and carefully processed, the medical examiner and disaster teams must conclude their work and, most importantly, the criminal prosecutions must go forward in the criminal justice system. There are, however, several issues I would like to discuss briefly.

FIRE CONTINGENCY PLAN

There have been many questions raised about whether or not the FBI had a fire contingency plan. The answer is yes. Along with a very extensive medical treatment and evacuation plan, there was a plan for dealing with fire. Based upon weapons and armament we knew were inside, we believed from the onset that no fire equipment or firefighters could safely be allowed near the compound, even if a fire broke out. The Branch Davidians had .50-caliber rifles with a 3,000-yard range capability that would easily penetrate fire vehicles. They could cover several square miles with these weapons. Numerous other long range weapons, including assault weapons as well as explosives, would make any approach by firefighters extremely dangerous. The Waco Fire Department had done a survey of the area early in the standoff after we advised them that their assistance might be needed. When the fire was set inside the compound, an immediate telephone call was placed over the 911 system. That resulted in the dispatch of the Bellmeade and Waco Fire Departments. When they arrived, we could not yet allow them near the compound because the exploding ammunition made it too dangerous. Gunfire continued from the compound even after the fire nearly engulfed the building. Later, the firefighters assisted the Hostage Rescue Team in cooling down the area on the front left side of the compound so that Hostage Rescue Team personnel could enter the bunker and tunnels to search for children in the buried school bus.

USE OF CS GAS

When the plan to increase pressure inside the compound was being formulated, the use of CS "tear" gas was very carefully considered. Based on our own experience

and that of the Department of Defense at the edgewood arsenal, CS gas, which is actually a powder, was selected because it was best suited to be used in the circumstances we faced. CS is nonlethal and studies have shown it is not harmful to adults or children. It is the safest, most effective tear gas available. One critical factor was that CS gas can be used without pyrotechnics. It will not start or contribute to a fire. Also, it is the most tested chemical agent in the world and is regularly used both by law enforcement and in military training exercises. Over the course of the morning of April 19, nineteen 15-second bursts were sprayed into the building and 300 projectiles were used on windows where the spray could not reach, windows which posed great danger because of their location in the compound.

HOW DID MEMBERS KNOW THIS WAS NOT AN ASSAULT

So that there would be no doubt about what our intentions were on the morning of the 19th, we called into the compound and told them what was beginning to be done. It also was announced continually over loud speakers. To reaffirm that this was not an assault, the barrage of gunfire from within the compound was not returned. The Branch Davidians knew that we always kept our word to them.

FATIGUE OF THE HOSTAGE RESCUE TEAM

There has been reporting about the physical condition of the Hostage Rescue Team. Without question they had spent over seven weeks under very dangerous and adverse conditions. It was our belief that this was pushing the outside of the envelope in regard to how long they should be deployed without a significant resumption of the training necessary to maintain their level of skill. There is only one Hostage Rescue Team and pulling them out for any purpose would have meant the loss of significant operational, tactical, rescue and medical capabilities, seriously weakening the law enforcement at the compound.

WAS THE FBI OPERATING IN A "VACUUM"

It has been raised in the media that the FBI did not consult with cult experts, family members of those inside the compound or others who could have helped us resolve the situation. Actually the opposite is true. We talked to family members all over the world, sending tapes they made into the compound. We consulted with experts from a variety of fields including religion, cults, psychiatry and related fields. We examined every offer of advice. Most of the cult experts told us that law enforcement should leave the area all together, in essence ignoring Koresh and the others regardless of their crimes.

CHILD ABUSE

There have been a variety of reports about child abuse inside the compound and whether that was a factor in deciding to continue increasing the pressure to bring people out. With unquestionable certainty, it was. There was substantial information before February 28 that children were being abused. Koresh had children by wives as young as 12 who remained in the compound. There were documented descriptions of children and infants being severely paddled. There was no reason to think that the pattern of abuse did not continue after the 28th. A psychiatric expert told us it was almost a certainty. In fact, if anything, every passing day increased the risk to the children both from severely deteriorating sanitary conditions and the possibility of gunfire.

WHY SUICIDE DID NOT SEEM LIKELY

The possibility of suicide likewise was an issue. We continually considered that possibility throughout the ordeal. This is why we consulted with psychiatric and other experts who told us suicide was not likely—that Koresh would not commit suicide. Koresh himself had indicated that he would not commit suicide. It was discussed with him by our negotiators. There was every indication that Koresh was thinking about the future. He talked about what would happen in the future with us and with his attorneys. Koresh had been successful in the past in defending himself against charges in the state criminal justice system. He had consulted with attorneys and reportedly discussed book and movie rights to his story. He continued to be very materialistic, expressing great distress about the possibility that his "vintage" automobile parked in front of the compound might be damaged by the armored vehicles. There was no indication from any source that suicide was likely with this increase in pressure. In any case, from the beginning the Hostage Rescue Team planned for the possibility of a murder/suicide. This plan called for using ar-

mored vehicles to make escape openings into the compound followed by the insertion of CS gas and stun grenades to act as a diversion for those who might choose to escape.

WHY APRIL 19TH

Finally, the question that has come up repeatedly is why the 19th, why did we not wait longer. There is no simple answer. The 19th was not "D-Day." There was no single piece of information that dictated the 19th. There was concern about the increasing vulnerability of law enforcement and the threat to public safety. There was concern about the potential for an armed mass breakout. The risk of injury to the agents was increasing and the conditions in the compound were deteriorating. Concern for the children in light of this was increasing. All of our experts told us Koresh would not come out unless he was forced out. All of our negotiations produced nothing and there was no prospect that it ever would. Thus it was apparent that the next step in incrementally increasing the pressure on Koresh should be taken. Otherwise, there was no hope of moving towards resolution. We would merely have been postponing the inevitable. April 19th was day 51 of a continuum of steps that had already been taken to try to have meaningful negotiations. It was the day the next logical step was taken.

Mr. BROOKS. Mr. Higgins, it appears the local media learned not only of your operation, but also of the details of that operation; the day, the time, and so forth.

How did the local media become almost an integral part of your operation, even following as close behind your trail as up the driveway leading to the compound?

Mr. HIGGINS. It is a concern to you and it is a concern to us. How they got there, how they got the information to get there is the focus of an investigation that is being conducted by the Texas Rangers. I cannot be more specific other than to tell you that it is being reviewed.

Our concern, in any case of this kind, is that we have enough to do to worry about the safety of our own officers, but to worry about the safety of someone who is there and within range of .50-caliber weapons is asking even too much of them. That will be looked at both as part of the investigation and as part of the later Treasury Department study.

We will provide copies of our public affairs guidelines, as Mr. Hyde has suggested, and when we have that information, we will keep you informed.

Mr. BROOKS. We look forward to seeing it.

[The information follows:]

Department
of the Treasury



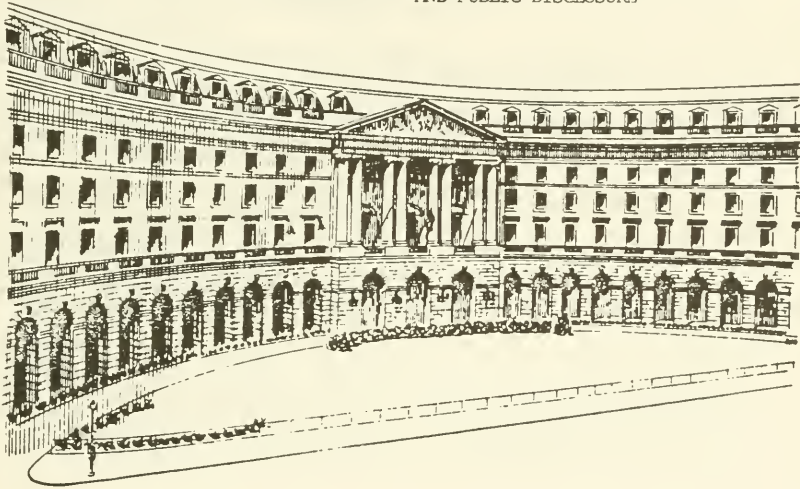
Bureau of
Alcohol, Tobacco
and Firearms

ORDER

ATF O 1200.2B

1/20/88

CONGRESSIONAL AND MEDIA AFFAIRS
AND PUBLIC DISCLOSURE



Distribution: ATF ML-5

OPI: CM:PA

JAN 20 1988

FOREWORD

To: All Bureau Supervisors

1. PURPOSE. This order establishes general guidelines and procedures relative to Congressional contacts, public and media affairs, and the requirements of the Freedom of Information and Privacy Acts.
2. CANCELLATION. ATF O 1200.2A, Public Affairs Guidelines, dated 2/15/80, and ATF O 1200.16, Implementation of the Freedom of Information and Privacy Acts, dated 5/15/78, are canceled.


Director

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CHAPTER A. GENERAL.1. DISCUSSION.

- a. The Bureau, as a publicly funded agency, has a responsibility to inform the public and their elected representatives concerning ATF's missions, policies, and activities. Inherent in this responsibility is not only the requirement that every employee be as courteous and helpful as possible in response to inquiries, but also the requirement that the Bureau actively initiate direct contact with the public, its representatives, and with various information media.
- b. In addition to the general principle that a government agency should function in as open a manner as possible, there are direct benefits to the agency and the public from a proactive effort to make information available. Public knowledge of laws, regulations, and policies promotes understanding and compliance; awareness of ATF's enforcement actions serves as a deterrent; understanding of ATF's role and accomplishments enables individuals to identify the Bureau for needed service and assists the Congress in evaluating ATF operations and identifying needed resources.
- c. The exchange or release of particular information by the Bureau may be mandated or controlled by law, regulation, policy, or by reasonable operational considerations. All employees shall be held to the same standard of knowledge and judgment with regard to releasing or failing to provide information that governs their performance of their assigned function.

2. RESPONSIBILITIES.

- a. The Office of Congressional and Media Affairs (C&MA) has overall responsibility for coordinating and initiating Congressional and media contacts on a national level and for coordinating and processing requests under, and implementing the requirements of, the Freedom of Information and Privacy Acts. C&MA is responsible for coordinating with and supporting other Headquarters and field entities in carrying out their responsibilities in this area. C&MA is also responsible for evaluating Congressional, public, and media attention to the Bureau and advising the Executive Staff on developing issues, potential problem areas, and circumstances involving Bureau credibility. C&MA advises the Executive Staff on policy and procedures in its area of responsibility.
- b. Within the Office of Congressional and Media Affairs are the Office of Congressional Affairs, the Public Affairs Branch, and the Disclosure Branch.

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3. TYPES OF INFORMATION.

- a. Public Information. Information which has been made available to a Bureau office by Headquarters or by regional or district management for unqualified dissemination (e.g., recruiting brochures, fact sheets, reference information, etc.). This information may be given out by any employee.
- b. Controlled Information. Information ATF is statutorily prohibited from releasing to the public or which can be released only with approval by a Headquarters office or through the Disclosure Branch. Controlled information includes but is not limited to national security information, personal information or data subject to the Privacy Act of 1974, tax returns and return information, and sensitive law enforcement, regulatory, and proprietary information. Controlled information may be released only as provided by statutory or regulatory guidelines, as specifically approved by a Headquarters office, pursuant to a published routine use for Privacy Act information, or by the Disclosure Branch.
- c. Discretionary Information. Information the Bureau is required by law or regulations to make available, or elects to make available to members of the general public. Unless specific instructions to the contrary are given by Headquarters, the regional director (RD), or the special agent-in-charge (SAC), discretionary information may be disseminated by first-line supervisors or by other personnel with the approval of the RD or SAC. In general, discretionary information that may be disseminated is any information published in the Federal Register or in ATF Quarterly Bulletins; information that has to be maintained and made available for public inspection at the Bureau's Public Reading Room (27 CFR 71.26); or, information the Bureau elects to release for the purpose of benefitting the public. (See Exhibit 1, Guidelines Regarding Qualified Public Information Requests and FOIA Requests.)

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CHAPTER B. CONGRESSIONAL AFFAIRS11. HEADQUARTERS AND FIELD CONTACTS.

- a. Headquarters contact with Members of Congress and their staffs in Washington, DC, is maintained through the Office of Congressional and Media Affairs. Field contact with the local office of elected representatives plays an important role in helping representatives with constituent issues and with gaining understanding of ATF's overall missions and ATF's activities on behalf of citizens they represent.
- b. Since Executive Branch agencies are restricted by law from lobbying, no employees shall, in their official capacity or under color of their employment by the Bureau, personally advocate or condemn existing or proposed legislation enforced by or impacting on ATF. This includes legislation relating to funding and staffing. Questions on these issues by a local Congressional staff office shall be directed to the Assistant Director (C&MA).
- c. Field offices shall identify the location of local Congressional offices in their areas of operation and ensure that those offices are provided current telephone numbers and addresses for Law Enforcement district(s) and post(s) of duty, and Compliance regional and area offices. The information provided will cover a Congressional district (in the case of Members of the House of Representatives) or a State (for Senators). Each local Congressional office should also be provided with the telephone number and address of the Assistant Director (C&MA).
- d. The responsibility for providing the above information rests jointly with Law Enforcement and Compliance supervisors, who will coordinate preparation and delivery of the information to Congressional offices within their assigned areas.

12. OFFICIAL VISITS. It is recommended that an official visit be made by supervisory personnel with local Congressional offices at least once every 2 years. In preparing for such visits, the following guidelines shall apply:

- a. Coordinate with the supervisor(s) of other ATF offices with operational responsibility in the same area. Wherever possible, visits will be a joint LE/CO effort.
- b. Contact the Office of Congressional and Media Affairs prior to the visit to determine whether there are pending issues that are likely to be mentioned.

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- c. Prepare an information packet to be left with the staff.
- d. Brief the staff on ATF's total mission and cite examples relating to the area represented by the office visited (i.e., local industry regulation, significant cases).

13. INFORMATION RESTRICTIONS.

- a. Information provided to local Congressional offices is governed by the same legal and policy restrictions governing release of information to the public. If an inquiry is received for controlled or discretionary information which should not be made public, the supervisor shall indicate that the information is not available at his or her level and refer the inquiry to the Assistant Director (C&MA).
- b. It is recommended that press releases be mailed to the local office of representatives in whose district the ATF activity takes place.

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CHAPTER C. MEDIA AND PUBLIC CONTACTS21. PUBLIC AFFAIRS.

- a. In general, the term public affairs refers to all non-operational contacts, apart from those processed under the Freedom of Information and Privacy Acts, with citizens, organizations, and media for the purpose of providing information about the Bureau, its missions, functions, and specific activities.
- b. The Public Affairs Branch is responsible for initiating contacts with general and specialized media on national programs, issues, and policies of the Bureau. The Public Affairs Branch assists field offices and other Bureau entities in planning for and responding to existing or anticipated media attention to operational activities, and provides materials supporting public affairs activity by those offices.
- c. Field supervisors shall maintain a media contact list with names, addresses, and telephone numbers of the wire services, print, radio, and television outlets in their areas of responsibility.

22. GENERAL GUIDELINES FOR MAKING RELEASES OF INFORMATION.

- a. Generally, the level at which information is provided to the media will be determined by the anticipated coverage (local, district, regional, or national); the scope or sensitivity of the activity or issue to be discussed (national or local investigations, policies, programs); and the level of policy or program responsibility of the employee from whom information is sought. Unless specific instructions/information or guidance has been provided for answering questions on activity or issues that go beyond the area of responsibility of a particular office, the questioner will be referred as appropriate to the next level supervisor or to the Headquarters Public Affairs Branch.
- b. Any contact by national media on an activity or issue, or by major media doing investigative reporting, shall be coordinated with the Public Affairs Branch prior to any agreement to be interviewed or prior to the release of any information (other than public or discretionary information released previously).
- c. All releases of information by an ATF office will identify a Bureau contact person who will be reasonably available to answer media questions. When it is likely that a release will generate calls or inquiries to Headquarters Public Affairs, the office promulgating the information will coordinate with the Public Affairs Branch.

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- d. Public Affairs shall be advised of any sensitive or operational considerations affecting releases of information.
- e. Releases of information on other than specific operational activities will normally be made by the office responsible (e.g., promotions by Headquarters, local training or seminar by the district, region or post of duty providing it).
- f. Copies of articles and books, including works of fiction, based on information gained by employees as a result of their employment shall be submitted to the Assistant Director (C&MA) and to the appropriate Associate Director for approval prior to submission for publication. The Bureau has the right to excise information relating to ongoing investigative matters, and operational techniques and procedures. The Bureau also has the right to excise references to classified information.

23. RELEASING INFORMATION ON CRIMINAL AND CIVIL ACTIONS.

- a. Department of Justice Guidelines. ATF policy and practice on releasing information on criminal and civil actions is based on Department of Justice guidelines (28 CFR, Chapter 1, Part 50) at Exhibit 2. Personnel releasing such information shall be responsible for adhering to both DOJ and ATF guidelines.
- b. Releasable Information.
 - (1) Vital statistics of the defendant: name, age, address, employment, marital status, and similar background information. If the defendant is a minor, no information may be released other than an acknowledgement that the subject is a minor.
 - (2) The substance or text of the charge.
 - (3) The penalties if convicted.
 - (4) The identity of the investigating or arresting agencies, and the length and scope of the investigation.
 - (5) The circumstances immediately surrounding an arrest, including the time, location, possession or use of weapons, and complete description of items seized.
 - (6) In cases of offers-in-compromise, revocations, or suspensions, the name of the person or firm involved, the facts in the abstract, and details of all allegations to which the person or firm has admitted.

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c. Non-Releasable Information.

- (1) Defendant's prior criminal record, except as already cited in warrant, affidavits or other public records where prior convictions are an element of proof. Release shall be limited to that part of the defendant's record cited in such documentation.
- (2) Observations concerning defendant's character.
- (3) Statements, admissions, confessions or alibis by the defendant, or his/her refusal or failure to make a statement.
- (4) Details of investigative procedures and techniques.
- (5) Statements concerning the identity, credibility, or testimony of prospective witnesses.
- (6) Statements concerning evidence or argument in a case whether or not such evidence or argument may be used at trial.
- (7) Any opinions as to guilt or innocence or the possibility of a plea of guilty or a plea to a lesser offense.
- (8) Any statements concerning any aspect of the court system.
- (9) Any release of information during or just prior to trial.

d. Photographs of Suspects and Defendants. ATF personnel shall not pose defendants or suspects for the news media and shall not make available photographs of a defendant unless a law enforcement function is served by doing so (e.g., apprehension of a fugitive).e. Coordination on Releases of Information.

- (1) ATF personnel are expected to follow standing orders or guidelines of U.S. district judges and U.S. attorneys on the release of information to the media.
- (2) Generally, press releases and press conferences should be coordinated with the U.S. Attorney's office, State or local prosecutors, and other agencies participating in the case. The release of information, however, is not dependent upon another agency's approval. Circumstances may dictate that a release be disseminated without such approval or coordination. However, any release made by ATF will cite the efforts of cooperating and participating agencies, unless they specifically request to be excluded.

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- (3) In formal task force situations, agreements and guidelines on releases of information should be developed when the task force is established. Where written guidelines are developed, they shall be submitted to the appropriate associate director, via the Chief, Public Affairs Branch, for approval prior to formalizing the agreement.

24. SUBMISSION OF CLIPPINGS, PHOTOGRAPHS, AND TAPES.

- a. To monitor media coverage of ATF and support Bureau offices, the Public Affairs Branch needs to receive clips of news articles and video/audiotapes about the Bureau.
- b. Photographs and videotapes produced by field personnel and showing employees in action are used in slide shows, brochures and video presentations distributed to field offices.
- c. Original newsclips, photographs, videotapes, etc., should be mailed to the Public Affairs Branch.

25. REQUESTS TO ACCOMPANY BUREAU PERSONNEL IN THE FIELD.

- a. Requests are often received from writers and newsmen to accompany Bureau personnel while they perform their duties.
- b. Such requests raise serious liability questions and must be approved by the appropriate associate director.
- c. ATF personnel receiving such a request will forward it to the appropriate special agent in charge or regional director. The SAC or RD will submit the request and a recommendation to the appropriate associate director, via the Assistant Director (C&MA).

26. RELEASING INFORMATION ON BUREAU EMPLOYEES.

- a. Employees, Except Series 1811. In accordance with Office of Personnel Management Regulation 5 CFR 293.311, supervisors may respond to inquiries about a former or current employee by confirming the employee's name and providing the following additional information: present and past position titles and occupational series; grade; annual salary rate; duty stations; and position descriptions, job elements and performance standards which, if released, would not interfere with Bureau operational functions.
- b. Employees, Series 1811. Information about these employees is withheld as required to provide investigative security and is not released routinely to the public (5 CFR 293.311). A request for information about series 1811 employees is considered a Freedom of Information Act (FOIA) request and is referred to the Disclosure Branch, unless excepted below.

- (1) Identifying information about non-supervisory series 1811 employees is withheld unless an authorized supervisor determines there is valid reason to release it.
 - (a) Examples of inquiries and requests referred to the Disclosure Branch: Is (name) an ATF special agent? Does (agent's name) work in your office? What are the names and addresses of agents in (city, state, the U.S.)?
 - (b) Example of release approved by a supervisor: Information is released to assist a series 1811 employee in obtaining a home mortgage or for similar purposes.
 - (2) Series 1811 supervisors represent the Bureau in communicating information to the public and limited information about these supervisors usually is a matter of public record. With the approval of a series 1811 supervisor, his/her name, title, and duty station can be released. However, in some instances this information may be withheld to maintain investigative security. Requests for such information will be routed to the appropriate supervisor.
 - (3) The policy cited in paragraphs 26b(1) and (2) does not pertain to or restrict series 1811 employees performing official duties which place them in contact with the public or become a matter of public record. Examples are court appearances and testimony, crime scene investigation, and witness interviews.
- c. Public requests for an employee's name, position, post of duty, etc., shall be treated as FOIA or Privacy Act requests required to be processed by the Disclosure Branch when: response to the request poses an imminent threat to the employee's safety or to an ongoing law enforcement, regulatory or other operational matter; the request is for information identifying all Bureau employees or a segment thereof.
 - d. With the approval of the appropriate associate director, supervisors may initiate releases of information on current and former employees charged with a criminal offense as the result of an ATF investigation. Such releases will be governed by policies and guidelines set forth in this Order and Department of Justice guidelines. In this situation, the employment status of current employees may be released (e.g., suspended, on administrative leave, etc.).
 - e. Requests for types of employee information not enumerated in paragraph 26a (e.g., disciplinary history of employee) shall generally be treated as FOIA or Privacy Act requests required to be processed by the Disclosure Branch. Employee information may be disclosed to certain third parties, however, pursuant to the Bureau's published routine uses for information contained in the Privacy Act Systems of Records. (See Exhibit 3.)

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- f. Nothing in this section is intended to prohibit the initiation of releases by the Bureau of information concerning employee accomplishments, such as promotions and awards, or the release of additional personal data with an employee's input and approval.

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CHAPTER D. THE FREEDOM OF INFORMATION AND PRIVACY ACTS.31. BACKGROUND.

- a. The Freedom of Information Act (FOIA) is a law that provides any person with the right to request any record maintained by and under the control of the Bureau. The FOIA also provides the Bureau with the option to withhold specific types of information when responding to such requests. Normally the Disclosure Branch will exercise the option to withhold information if release would interfere with the Bureau's ability to perform its authorized functions; constitute an invasion of an individual's personal privacy; identify a confidential source; or reveal trade secrets and commercial or financial information.
- b. The Privacy Act of 1974 (5 U.S.C. 552a) is both an access law and a prohibiting law. Any individual (i.e., U.S. citizen or legal alien) who is the subject of a Privacy Act record or records maintained by the Bureau can request access to such records. The Act requires the Bureau to give individuals access to their records, unless the Bureau has exempted the entire system of records from the access provisions. The Disclosure Branch will normally withhold records from an exempt system of records if release would impair the Bureau's ability to perform its authorized functions. The Act also affords individuals an opportunity to contest inaccuracies in their records.
- c. The Privacy Act further prohibits the Bureau from disclosing information about an individual to anyone outside the Department of the Treasury without prior written consent of the subject of the record. There are exceptions to the "prior written consent" rule that allow Bureau employees to disclose information within certain guidelines. Also, the Act requires employees to account for disclosures made outside the Department and prohibits employees from collecting information not needed to perform a function authorized by statute, or from using information for a purpose other than that for which it was collected.
- d. As used in this paragraph and throughout this chapter, the term "Privacy Act record" means any item, collection or grouping of information about an individual that is maintained by the Bureau. Such information includes but is not limited to education, financial transactions, and medical history that contain the individual's name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

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32. RESPONSIBILITIES.

- a. Disclosure Branch. This office is responsible for directing and monitoring the Bureau's implementation of the FOIA and the Privacy Act of 1974, and for processing requests for disclosure of records.
- b. Comptroller. This office is responsible for establishing and updating rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records; conducting training for new employees for the purpose of instructing them in regard to the rules, procedures, and requirements of the Privacy Act; and establishing procedures to review requests for forms and orders to ensure that each document meets statutory requirements and does not conflict with provisions of the Privacy Act.
- c. Office of Chief Counsel. This office is responsible for reviewing all administrative appeals of initial denials.
- d. Offices of Associate Directors, Assistant Directors, Comptroller, Regional Directors, Special Agents-in-Charge, and Chiefs of Field Laboratories. The heads of major offices have the responsibility for conducting record searches, providing requested records in a timely manner, and advising the Disclosure Branch and Chief Counsel whether requested information or documents should be provided to a requester. The office head shall sign memoranda recommending the denial in whole or in part of requested information in the custody of his office. Such memoranda should set forth the reasons for the recommended denial (27 CFR 71.21(h)).
- e. Other Bureau Employees.

(1) Records System Managers are responsible for:

- (a) Annual Review. This responsibility includes establishing procedures to review annually the recordkeeping practices for each system of records maintained so that they: contain only relevant and necessary information to accomplish a lawful ATF function; are protected against unauthorized disclosures; are accurate; do not describe how any individual exercises rights guaranteed by the First Amendment to the Constitution.
- (b) Publishing. This includes publishing in the Federal Register, at least 30 days prior to implementation, a notice of any new use or intended use of information in the system, and provides an opportunity for interested persons to submit written data, views, or arguments to the agency. In addition, the information required to be published annually in the Federal Register pursuant to subsections (e)(4)(A) through (I) of the Privacy Act must be updated.

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- (2) All Bureau employees are responsible and accountable for their actions insofar as collecting, maintaining, and disseminating information about individuals. Employees must: only collect relevant and necessary information to accomplish a lawful ATF function; protect records from unauthorized disclosure; insure that records are accurate; and account for all disclosures made to any person or agency outside the Department of the Treasury.

33. PROCEDURES FOR IMPLEMENTATION OF ACTS.

a. Collecting Information About Individuals.

- (1) When practical, collect the information directly from the individual who will be, or is, the SUBJECT OF RECORD.
- (2) Collect no information that describes how an individual exercises his FIRST AMENDMENT RIGHTS unless the information is pertinent to and within the scope of an authorized law enforcement investigation or authorized statute.
- (3) Collect only information that is RELEVANT and necessary to accomplish a lawful ATF function.
- (4) An individual asked to supply information about himself/herself or another person must be informed of pertinent provisions of the Privacy Act. Accordingly, an individual asked to supply information will be informed (on the paper used to collect information or a separate paper retained by the individual) of the following:
 - (a) The authority, whether granted by statute or by Executive order of the President, which authorizes solicitation of the information.
 - (b) Whether supplying the information is mandatory or voluntary.
 - (c) The principal purposes for which the information is intended to be used.
 - (d) The routine uses which may be made of the information as published in the Federal Register.
 - (e) The consequences to the individual, if any, for not providing the requested information.

b. Maintaining Information.

- (1) Ensure that all the information contained in a system of records is current, accurate, complete, and relevant to a purpose required to be accomplished by statute or Executive order.

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- (2) Ensure that all records are secure against unauthorized disclosure by providing adequate safeguards for the protection of such records (e.g., restricted areas, limited access, lockable filing cabinets, and rooms). Adequate safeguards are those necessary to ensure that only employees having a need to know are allowed access to records and that such employees are cognizant of disclosure requirements.

c. Disclosing Information.

- (1) No employee may disclose ATF records or information to any person outside the Department of the Treasury unless specifically delegated authority by the Director to make such disclosure (27 CFR 71.27).
- (2) Authority to disclose specifically designated types of information is found in 27 CFR 71 and at Exhibit 3.
- (3) Bureau employees are authorized to disclose information about an individual from a Privacy Act System of Records under the following circumstances:
 - (a) To any person, if the subject of the record has provided prior written consent for the disclosure.
 - (b) To any Department of the Treasury employee who has a need for the information in the performance of his duties.
 - (c) To third-parties pursuant to a published routine use. Copies of the routine uses for all of the Bureau's Systems of Records are at Exhibit 3.
- (4) The ROUTINE USE exception allows an agency to further waive the "prior written consent" requirement when a disclosure is compatible with the purpose for which information was collected. The Director has published in the Federal Register a list of routine uses for each system of records. The routine use exception may not be invoked unless the applicable specific routine use has been published in the Federal Register list (Exhibit 3).
 - (a) Examples of routine uses.
 - 1 An ATF inspector may tell a law enforcement agency that John Doe is applying for a firearms license if the purpose for disclosure is to obtain information needed to process the application.

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- 2 A personnel officer or a supervisor may disclose information from an employee's performance evaluation record upon request from a Federal agency that is considering hiring the ATF employee.
 - 3 A special agent may disclose information to a local law enforcement agency about an individual in order to obtain local investigative assistance.
 - 4 Any ATF employee may disclose to a governmental entity having civil or criminal jurisdiction any information contained in its files that might relate to a violation of that entity's regulations or laws.
- (h) The ATF employee must evaluate all requests to determine if the disclosure of information is compatible with established routine uses. The following examples illustrate instances in which disclosure is not compatible; therefore the information cannot be disclosed as a routine use.
- 1 A bank requests criminal information about a potential borrower who wishes to finance a car. The bank wants to protect its collateral (the car) from seizure by the Government by determining if a possibility exists that the borrower might use the car to commit criminal acts.
 - 2 A State welfare agency requests criminal information about a potential welfare recipient even though State law does not prohibit ex-criminals from receiving welfare benefits.
- (5) The term "accounting" means that for every disclosure made outside the Department of the Treasury, the Bureau must have the ability to recall the following data items:
- (a) Date of disclosure.
 - (b) Name and address of person or agency to whom the disclosure was made.
 - (c) The purpose for making the disclosure (e.g., to obtain information about a subject, to verify information from an application, or to initiate a judicial process).
 - (d) The nature of the disclosure (i.e., what information was disclosed).
 - (e) The name of the employee making the disclosure.

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- (6) The employee may use any method which provides the Bureau with the ability to recall the data items in paragraph 33c(5)(a) through (e). Employees may annotate the record or include the accounting in the record itself. The end result must provide the reader of the record with the ability to recall all disclosures made from the record.
- (7) The Privacy Act establishes criminal penalties consisting of a fine of not more than \$5,000 for the following violations.
 - (a) Willfully disclosing a record, knowing the disclosure to be prohibited.
 - (b) Willfully maintaining a system of records without meeting the notice requirements of the Act.
 - (c) Knowingly and willfully requesting or obtaining any record concerning an individual under false pretenses.

34. SUBMITTING FOIA OR PRIVACY ACT REQUESTS. All requests made pursuant to the FOIA and the Privacy Act must be made in writing and submitted to the Chief, Disclosure Branch. The request must reasonably describe the records sought, and state an agreement to pay appropriate search and copy fees. A Privacy Act request, in addition, must be notarized.

GUIDELINES REGARDING QUALIFIED PUBLIC INFORMATION REQUESTS
AND FOIA REQUESTS

An (X) in the "Public Information" column indicates that information can be released by a first-line supervisor or approved employee, unless otherwise indicated in this guide. An (X) in the "FOIA" column indicates the requester must submit a FOIA request which will be processed by the Disclosure Branch.

This guide is not designed to be all-inclusive. See Chapter D of this Order for guidance concerning the disclosure of Privacy Act information in accordance with a published routine use.

Item	Public Info.	FOIA
1. Applications.		
a. Employment with the Bureau. (Also see 7f.)		X
b. FAA Basic Permit.		
(1) Information from application that can be released (until the expiration of 1 year following final action on the application, 27 CFR 1.59 and 71.26(h)).		
(a) Name and business address of applicant.	X	
(b) Kind of permit sought.	X	
(c) Whether applicant is an individual, partnership, or corporation.	X	
(d) Name and business address of each partner or, if a corporation, each principal officer and each stockholder owning 10% or more of the corporate stock.	X	

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Exhibit 1

Item	Public Info.	FOIA
(2) Administrative hearing transcripts, law judge's recommendation, and copies of decisions (until the expiration of 1 year following final action on the application).	X	
(3) Information from application and administrative hearing more than 1 year after final action on the application.		X
(4) Any other information from the basic permit file.		X
c. Firearms licenses. (Also see item 7d.)		X
d. IRC operating permits.		X
e. Occupational tax stamps.		X
f. Relief from firearms disability.		
(1) Explosives.		X
(2) Firearms. (Also see item 2b.)		X
2. Criminal investigatory files.		X
a. Certain factual information about a defendant or an investigation may be confirmed in accordance with DOJ guidelines set forth in 28 CFR 50 (see paragraph 23 of this Order).	X	
b. Information published in the Federal Register about a firearms relief application that was granted (i.e., name/address of successful applicant, date of disabling conviction, and court where convicted).	X	

Item	Public Info.	FOIA
3. FFL Newsletter.	X	
4. Handbooks published by the Bureau.		X
5. Industry Circulars.	X	
6. Label approvals for distilled spirits, wine, and malt beverages. Requests must be in writing to Chief, Product Compliance Branch, Headquarters, and must contain information required in 27 CFR 71.26(d). No tax returns or return information, trade secrets, or confidential material can be released.	X	in writing
7. Lists. "X" in the Public Information column indicates the information can be released. "P" in the Public Information column indicates that only specific information can be released. An ATF office may release a list, as indicated, if the information is readily available. Refer a request to the Disclosure Branch if the information must be compiled from multiple sources or collected from other offices.		
a. Alcohol industry members identified via the FAA Act.		
(1) Beverage Distilled Spirits Plants and Breweries Authorized to Operate (ATF P 5100.13).	X	
(2) Bonded Wineries and Bonded Wine Cellars Authorized to Operate (ATF P 5120.1).	X	
(3) Importers of distilled spirits, wine, and malt beverages.	X	
(4) Wholesalers of distilled spirits, wine, and malt beverages.	X	

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Exhibit 1

Item	Public Info.	FOIA
b. Industrv members identified via the Internal Revenue Code (IRC).		X
c. Firearms curios and relics (ATF P 5300.11).	X	
d. Federal firearms licensees (only the information appearing on the license).	P	
e. ATF employees/series 1811 (see paragraph 26 of this Order).	P	X
f. ATF employees other than series 1811 (release only name, grade, salary level, position title, and duty station).	P	X
8. ATF news releases (see paragraph 26 of this Order).	X	
9. Offers in compromise.		
a. Abstract and statement (up to 1 year after the date of acceptance (27 CFR 71.26(a))).	X	
b. Abstract and statement (more than 1 year after date of acceptance).		X
c. The actual offer.		X
10. Orders (ATF).		X
11. Publications. Refer to ATF Publications (ATF P 1326.1).		
a. Publications marked with an asterisk must be referred to the Disclosure Branch.		X
b. Publications without an asterisk may be released by any employee.	X	

DEPARTMENT OF JUSTICE GUIDELINES ON RELEASING INFORMATION

(This exhibit is 28 CFR, Chapter 1, Part 50.2, 7-1-86 Edition.)

Release of information by personnel of the Department of Justice
relating to criminal and civil proceedings.

(a) General.

- (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.
- (2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.
- (3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.
- (4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) Guidelines to criminal actions.

- (1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

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- (2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.
- (3) Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:
- (i) The defendant's name, age, residence, employment, marital status, and similar background information.
 - (ii) The substance or text of the charge, such as a complaint, indictment or information.
 - (iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.
 - (iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

- (4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.
- (5) Because of this particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.
- (6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

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- (i) Observations about a defendant's character.
 - (ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.
 - (iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.
 - (iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.
 - (v) Statements concerning evidence or arguments in the case, whether or not it is anticipated that such evidence or argument will be used at trial.
 - (vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged or the possibility of a plea to a lesser offense.
- (7) Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.
- (8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.
- (9) Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.
- (c) Guidelines to civil actions. Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

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- (1) Evidence regarding the occurrence or transaction involved.
- (2) The character, credibility, or criminal records of a party, witness, or prospective witness.
- (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
- (4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
- (5) Any other matter reasonably likely to interfere with a fair trial of the action.

(Order No. 469-71, 36 FR 21028, Nov. 3, 1971, as amended by Order No. 602-75, 40 FR 22119, May 20, 1975)

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Exhibit 3

ROUTINE USES FOR DISCLOSING PRIVACY ACT RECORDS

1. The following "Routine Uses" apply to all ATF systems of records except the FOI Requests System of Records. Records in all systems (except the FOI Requests System of Records) may be disclosed as a routine use to:
 - a. Employees of government agencies when required or authorized to be released by statute, regulations or Executive order.
 - b. Appropriate Federal, state, local or foreign agencies responsible for enforcing administrative, civil or criminal laws; hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit.
 - c. A court magistrate or administrative tribunal in the course of presenting evidence; counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.
 - d. A congressional office in response to an inquiry made at the request of the individual to whom the records pertain.
 - e. Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relate to an agency's functions relating to civil and criminal proceedings.
2. In addition the following systems of records have specialized routine uses as indicated:
 - a. Administrative Record System. Records in this system may be disclosed to:
 - (1) Any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative matter.
 - (2) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.
 - b. Correspondence Record System. Records in this system may be disclosed to:
 - (1) Any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative matter.

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- (2) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

c. Criminal Investigation Report System. Records in this system may be disclosed to:

- (1) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.
- (2) INTERPOL and similar criminal intelligence gathering organizations for the purpose of identifying and suppressing the activities of international and national criminals and terrorists.
- (3) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- (4) Insurance companies making determinations regarding claims in cases where the Bureau has conducted or is conducting an arson investigation.

d. Fiscal Record System. Records in this system may be disclosed to:

- (1) Any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative matter.
- (2) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

e. Freedom of Information Requests System of Records. Records in this system may be disclosed to:

- (1) Disclose information to other agencies when required for coordination of response or referral.
- (2) Disclose information to the Department of Justice for defending law suits.
- (3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

f. Internal Security Record System. Records in this system may be disclosed to:

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- (1) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.
- (2) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. Personnel Record System. Records in this system may be disclosed to:

- (1) Any third party, to the extent necessary, to collect relevant information from the third party, provided that the information is needed by the Bureau to render a decision in regard to an administrative matter.
- (2) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

h. Regulatory Enforcement Record System. Records in this system may be disclosed to:

- (1) Any third party to the extent necessary to collect or verify information pertinent to the Bureau's decision to grant, deny or revoke a license or permit; to initiate or complete an investigation of violations or alleged violations of laws and regulations administered by the Bureau.
- (2) INTERPOL and similar national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes.
- (3) Foreign governments in accordance with formal or informal international agreements.
- (4) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. Technical and Scientific Services Record System. Records in this system may be disclosed to:

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- (1) Any third party to the extent necessary to collect or verify information pertinent to the Bureau's decision to grant, deny or revoke a license or permit; to initiate or complete an investigation of violations or alleged violations of laws and regulations administered by the Bureau.
- (2) INTERPOL and similar national and international intelligence gathering organizations for the purpose of identifying international and national criminals involved in consumer fraud, revenue evasion or crimes.
- (3) Foreign governments in accordance with formal or informal international agreements.
- (4) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- (5) Insurance companies making determinations regarding claims in cases where the Bureau has conducted or is conducting an arson investigation.

Mr. BROOKS. Why did you go in 10 o'clock Sunday morning in broad daylight when everyone was up and about?

Mr. HIGGINS. Recently, I have heard several experts say you never serve a warrant other than at night to ensure surprise. We were trying to serve a search and arrest warrant and the mission was to do it in the safest way possible. We knew there were innocent men, women, and children in the compound as well as those who were wanted or suspected of engaging in illegal activities.

We knew there was a time of day when the women and children would be in one part of the compound, the men, including Vernon Howell, would be at a worksite in another part of the compound, and that both elements would be away from the weapons. That was the intelligence information that we had.

It was our decision that this was the safest time to serve this warrant, knowing what type of violent individuals were behind that compound wall, and that is why we selected that time.

Mr. BROOKS. I am curious as to when you notified local support units, like the ambulance service. How do you respond to reports that these local units leaked the information?

Mr. HIGGINS. I would not respond to the last part, if you can understand why I would not. But we would at some point and at the latest point possible in an operation where there is the possibility of death or injury to anyone. We would notify and have on standby some EMT support as well as our own units. And my experience has been these are people that you can trust.

Mr. BROOKS. We would like to know when you did do it.

Mr. HIGGINS. I sure will.

[The information follows:]

There is no public emergency service available in the Waco area. Therefore, a private firm, American Medical Transport (AMT), was notified on February 12, 1993, that an ambulance and two paramedics were needed for several hours for February 22, 1993. No other details were given. The point of contact said that the service had worked with law enforcement before, and that he understood the need for security. During the week of February 15, 1993, AMT was advised of a change: The ambulance and paramedics would be required on March 1, instead of February 22. Then, AMT was advised that the request for March 1 was being changed once again, this time to February 28 at 0800. The staging area for AMT was the same as the one used by the Bureau of Alcohol, Tobacco and Firearms (ATF).

Mr. BROOKS. Was BATF aware Koresh had been tipped off on February 28 as to your planned search of the compound?

Mr. HIGGINS. I would like to give you a very simple answer. Let me tell you why I can't. Maybe one of the benefits, but I will guarantee one of the heartaches of working in an agency for 32 years, is that you know many of the people who were in Waco, and I do. I know many of the people who were both there on the raid teams and as part of the leadership there that day, and I know how much respect, confidence and trust they have in each other. So what I have said and what I would say to you today is I don't believe—and I am confident there is not a single leader in ATF that would knowingly and purposely lead his agents into an ambush situation.

Second, we were ambushed. So that must have happened. We went into an ambush situation. The problem is and the reason there is no easy answer today is, I have seen some of the statements and others have. Some have been leaked, not by us; some have been leaked, which indicate that there were differences of

opinion or at least conflicts in terms of how the information that we had gathered that day was evaluated and interpreted and why a decision was made based on that evaluation and interpretation.

As part of the investigation of the deaths of our agents, statements were taken by the rangers and those statements will be pursued. That will be a focus of the Treasury Department study and we have promised all of our leaders and people who were there that day that they will have a fair opportunity to give their statements and be judged on their actions that day.

Mr. BROOKS. Judge Sessions, what evidence did the FBI have during the time of the standoff that child abuse had occurred and was occurring inside the compound?

Mr. SESSIONS. Mr. Chairman, as the Attorney General spoke this morning, we had reviewed all the information that we had about abuse that had taken place before the siege actually began and the record was pretty replete with it, including the information that ATF supplied.

Additionally, after the siege began, Mrs. Hollingsworth, Victoria Hollingsworth, came out of the compound and she confirmed for us the continuation of the living arrangements and of one of the child brides, I believe it is her daughter, in the compound.

Mr. BROOKS. How old was she?

Mr. SESSIONS. I think she was then 14. Was she 13 at the time or 14? Thirteen or 14.

Mr. BROOKS. That is statutory rape in Texas.

Mr. SESSIONS. That is what you call it.

Mr. BROOKS. I believe.

Mr. SESSIONS. So there was from her, from her declaration, obviously, a continuation of the circumstances.

Dr. Dietz, who is a psychiatrist who has consulted with us in many, many circumstances, confirmed to us that there was every reason to believe that what had happened before would continue and was continuing at that very moment and that the children would continue to suffer from that experience that they were having inside the compound. And we took that as a continuing indication of abuse.

I think the President of the United States in his reference made most eloquent referral to it as to what he believed statutory rape was in his part of the country and what educating into suicide and gun training would be considered in his part of the country. So I have no question that it was an element that we could reasonably, from the psychiatrist saying it and predicting for us his professional judgment and opinion, and the words of Mrs. Hollingsworth, that it was continuing.

Mr. BROOKS. Some have suggested the BATF operation on the 28th of February limited the responses available to the FBI in the following days when you took over. Is that accurate, and would the Bureau have handled the situation differently from the onset?

Mr. SESSIONS. Mr. Chairman, I am not sure that I understand the question. Are you asking me if they made something that was extremely difficult for us to cope with once we got there?

Mr. BROOKS. Would you have changed the modus operandi if you had been running it from the start?

Mr. SESSIONS. Well, the first part of the question. We took the circumstance as we found it, which is true when our Hostage Rescue Team is deployed anywhere or when our SWAT is deployed anywhere. We normally come into extremely difficult, tense circumstances. So that they were prepared to do that. And as Mr. Clarke described, we put all of the various associated elements within the Hostage Rescue Team and we are prepared to support it fully.

The answer to the second part of the question, of course, might be answered partially by reference to our own plan. Now, we have a different mission. Our mission was to bring those people out safely. The Hostage Rescue Team mission and motto is to save lives. We did not intend to go into that compound nor plan to go in that compound. But of course we had the knowledge that was earned in part with great cost by the ATF. So we knew that.

I think that as the Attorney General indicated this morning, the studies that will be made about the raid itself will be giving clear answers of experts and tactical people about what they would or would not have done and that probably—I should not speculate but only tell you about what we actually encountered and did with it.

Mr. BROOKS. I have one last question to ask now. How do you answer critics' contentions that the FBI should have let the stand-off continue, even if it meant weeks or months of waiting for Koresh to make up his mind?

Mr. SESSIONS. Mr. Chairman, there are multiple answers to that. The one that I spoke to in my opening statement was simply that we do not normally in the criminal justice system allow criminals to set their own timetables about when they will submit to lawful authority.

It seems to me that that in and of itself is a basic and fundamental discussion about what the American people expect law enforcement to do, what our oversight committees expect law enforcement to do, not to simply stand by, suck our thumbs and wait.

But aside from that, there were great dangers from trying to stand and wait and dangers not only to the people outside but the people inside. There were many compelling reasons for not delaying and the most serious of them is that we have an obligation in law enforcement to protect American people. They expect law enforcement to perform in a way that does that. And those people inside that compound were and are suspected of committing at least four murders and of wounding and assaulting Federal firearms people, and the law was being carried out and carried out properly, reasonably, with constraint, with restraint, with reason, with oversight, with careful plans, with careful authorization. I think we did what you contemplate we should have done.

Mr. BROOKS. A little late for me.

Mr. Fish, the gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

Mr. Higgins, why was no attempt made to get an arrest warrant for Koresh in October or November or December 1992? As I understand it the investigation stage of your operation was complete by the fall of 1992. Couldn't he have been more easily apprehended during that time frame?

Mr. HIGGINS. That is a fair question, Mr. Fish, and I will be as responsive as I can.

We had gathered information which we feel established probable cause earlier than February, as you have pointed out. The problem was that we also knew that this was a compound in a relatively isolated place, that we needed to search and serve warrants to a group that was not going to come out peacefully. I think that has been proven by the reaction. But we knew there was a violent group there. So we needed to get some information about them to determine when the best time was to go in. We put an undercover agent into it and that segment of the operation took that long. We were waiting to try to execute the warrant at the best time we could with the best information we could.

Mr. FISH. That is your answer as to why you did not apprehend Mr. Koresh in the fall?

Mr. HIGGINS. That is my answer as to why we did not get the warrants until February, actually the 25th, I believe. We got it when we thought we had both the information to establish the violation and the information to serve it peacefully.

Mr. FISH. Mr. Higgins, can you tell us what specifically prompted the February 28 BATF raid? Was it some event or information that created a sense of urgency at that particular time? If so, what was the event or what was the information?

Mr. HIGGINS. We did it at a time when we felt like we had both the probable cause and an opportunity to go into the compound and that was February 28. So that is what prompted the event.

I can tell you the reason for some urgency, and that is that they were continuing to fortify the compound. We knew they had explosive materials and they were suspected of manufacturing explosive devices. With that amount of explosive material in that compound, at any point it was a threat to both the community and to the safety of the people who were in that compound. So there was a sense of urgency.

Mr. FISH. I would like to ask you now about the institutional experience, institutional memory of the BATF with respect to similar episodes. I understand we have heard the figures several hundred operations a year, more than that in a period of some 18 months, mostly to do with illegal firearms, searches or operations.

In the recent history, how many times has BATF been involved in a standoff with a cult or a new religious group in a similar situation?

Mr. HIGGINS. I will have to provide you specifics, but we were called on to help in the standoffs in Marion, Utah, and in Idaho where you had survivalists in a standoff situation. We were there with the marshals and with the FBI, going back to 1985 with the Covenant of the Sword and the Arm of the Lord. We were involved in that. And that was a similar situation, and in every one of those situations different and safe options have been tried. So we do have an institutional memory.

Mr. FISH. I see. I wonder in the interest of time, Mr. Chairman, if I could ask Mr. Higgins to supply us with a record of those instances, and in particular I am concerned about what was the outcome of their participation in the operation.

Mr. BROOKS. Without objection, that will be done.

Mr. HIGGINS. Be glad to.

Mr. FISH. Thank you.

[The information follows:]

ATF has never been in a direct standoff with a cult prior to Waco. However, ATF served in a support role at three incidents where the Federal Bureau of Investigation (FBI) Hostage Rescue Team assumed primary responsibility. In April 1985, ATF was involved in the Covenant Sword, and the Arm of the Lord (CSA) standoff in Arkansas, which resulted in a surrender. In January 1988, ATF was involved in the Singer and Swapp standoff in Marion, Utah. One corrections officer was killed during the standoff, which ultimately ended in a surrender. In August 1992, ATF played a support role in the Weaver standoff in Idaho. One U.S. marshal and two suspects were killed; two were wounded. Ultimately, the standoff ended in a surrender. ATF was involved in each of these cases because of criminal violations by the suspects.

Mr. FISH. Mr. Higgins, your agency, the Bureau of Alcohol, Tobacco and Firearms, is a component of the U.S. Department of the Treasury. People in your agency have indicated to us that it was the BATF's practice to notify the Assistant Secretary of the Treasury for Enforcement of its intentions prior to commencing a law enforcement action. It was further indicated someone did, in fact, either notify the Assistant Secretary Designee or a confirmed Assistant Secretary of the Treasury prior to your initial raid.

Can you tell us who it was at the Treasury that was notified about the raid, when they were notified and what their response was regarding your intentions?

Mr. HIGGINS. I think there was some notification early on in the investigation, as we do in all significant investigations going back over the months. But with respect to the raid, we had a briefing, a short briefing, conducted by one of our liaison officers on, I believe, Friday before the raid on Sunday.

The contact I had after that briefing had taken place was with the Acting Assistant Secretary, Mr. Simpson, when he had some questions for me. Some of the concerns—some of the same concerns we had, surfaced in terms of what were the options that we had considered, why were we doing what we were doing, who was involved during this as part of the investigation.

I answered those questions and the operation proceeded. So those are the contacts that I had. I did not ask for approval of the operation.

Mr. FISH. You did not ask for approval?

Mr. HIGGINS. No, sir.

Mr. FISH. Was it your understanding that the official within the Office of the Secretary of the Treasury had approved or signed off on this plan or that he merely voiced no objection?

Mr. HIGGINS. He voiced some concerns and I answered those concerns I think satisfactorily. He did not sign off on a plan. Is that his approval? Since I work for the Acting Assistant Secretary, I guess you could say if he had said, don't do it, I would not have done it. But I did not ask for that approval and he did not put it that way.

Mr. FISH. Can I go on with Mr. Sessions, Mr. Chairman.

Mr. BROOKS. Yes.

Mr. FISH. Director Sessions, this morning Attorney General Reno, I think I quote her correctly, said that in order to determine how best to negotiate, the FBI was consulting with behavioral ex-

perts. From whom were you receiving information and analysis on Koresh and the individuals in the compound?

Mr. SESSIONS. Congressman Fish, there is an extensive catalog of that. I have it sitting here by the names of the numbers of people with whom we contacted, whom we contacted professionally. There were dozens of other persons whose names and whose, the contacts were documented. If you would like that, I will give it to you.

I referred, for instance, to Dr. Dietz as being an important person with whom we directly consulted; a Dr. Miron, who is the psycholinguist with whom we consulted at Syracuse University. Dr. Joseph Krofcheck, who is a psychiatrist and psychoanalyst who works there, and there are numbers of individuals, and if you would like, I would submit this list to you.

Mr. FISH. Perhaps the committee would like to have that.

Mr. BROOKS. We would appreciate that Judge Sessions.

Mr. SESSIONS. I will be glad to provide that.

Mr. FISH. Let me ask some specific questions.

Are these experts on the scene or were they operating from a remote location?

Mr. SESSIONS. Both. Mr. Jeff Jamar is here, who was the SAC in Waco, and Bob Ricks, who assisted him, and maybe the two of them could explain carefully how that consultation was done on the scene.

Mr. JAMAR. Dr. Dietz came to Waco. He came to our command post and listened to negotiations and went through various documents we had, and he had been—he was someone that our negotiators and behavioral science people were familiar with.

Mr. FISH. Mr. Dietz.

Mr. JAMAR. Park Dietz.

Mr. FISH. What is his specialty?

Mr. JAMAR. He has a Ph.D. in psychology.

Mr. FISH. Did there come a time when theologians from the House Reunion Institute became involved in a dialog with Koresh?

Mr. SESSIONS. I do not know but maybe Mr. Jamar or Mr. Ricks knows that.

Mr. JAMAR. Would you repeat that?

Mr. FISH. I will break it down. Did there come a time when theologians from the House Reunion Institute consulted with you?

Mr. JAMAR. If you are talking about Dr. Philip Arnold, who is from that institute, he introduced himself to us. He also provided a tape for us that we provided inside to the compound for them to listen to. He also consulted with the attorney, Attorney Dick DeGuerin, in a radio show where Dr. Arnold and Dr. Tabor participated, and a tape of that radio show was also provided in the compound in order to help the negotiations.

Mr. FISH. Did he ever personally involve himself in a dialog with Koresh?

Mr. JAMAR. No.

Mr. FISH. Were there other religious experts or biblical scholars with whom you consulted?

Mr. JAMAR. Several.

Mr. FISH. Did any of them mediate with the Davidians, with Koresh?

Mr. JAMAR. No, sir.

Mr. FISH. Did you seek the advice of trained theologists and sociologists to mediate?

Mr. JAMAR. Yes, sir, we had extensive research done for us. We had the great advantage of having Baylor University nearby and the whole religion department was almost at our disposal.

Mr. FISH. What use did you put them to? If they didn't have any contact with Mr. Koresh, what use did you put them to?

Mr. JAMAR. They researched for us to help us understand Koresh's point of view. Of course, he corrupted religions to his own ends and corrupted people to his own ends, but they helped us understand or helped us try to understand what Koresh was saying and what his prophesies might be.

Mr. FISH. I guess my next question is: What use was this understanding in the operation?

Mr. JAMAR. During the negotiations. During the discussion we had hours and hours and hours of religious discussion with Koresh.

Mr. FISH. I see. But these religious experts were not used personally in the negotiations?

Mr. JAMAR. With no direct contact with the compound, no, sir.

Mr. FISH. Now, Mr. Sessions, finally, Mr. Clarke has said viewing the fire, he simply could not believe it. I want to see if you cannot help us in our situation. I find irreconcilable positions. FBI agents had indicated how shocked and horrified they were on Monday when the compound went up in flames, and yet we have statements by the same people, Mr. Clarke particularly, that suicide was contemplated. That is, they thought Koresh was going to commit suicide. His communications with agents and particularly his use of biblical passages convinced agents that this type of fiery ending was exactly what he wanted.

How can we reconcile these two statements?

Mr. SESSIONS. I may not have heard Mr. Clarke correctly. It is my understanding that conversations with experts, with psychiatrists, with psychologists, with behavioral scientists, with psycholinguists, with Mr. Koresh himself, with his attorneys, with the negotiators that Mr. Jamar has referred to who were in contact continually, all those people said that David Koresh would not commit suicide; that he would never come out but he would not commit suicide. But it was a consideration all along about the possibility and we did have information that indicated that he had trained some of his people, even children, in how to commit suicide. So you could not ignore the possibility.

There were suggestions that he might try to ensnare us, and you will remember the letters that came out referring to the snares; that he might try to ensnare us into a great battle where there would be explosions and fire and destruction. In spite of all that, it is my understanding that there is none of the expert testimony that indicates that Mr. Koresh contemplated suicide.

Mr. FISH. Thank you very much. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you. Mr. Edwards, the gentleman from California.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Clarke, you were in Washington most of the time. How much time did you spend in Waco?

Mr. CLARKE. I was in Waco for about 2 days.

Mr. EDWARDS. You were directing the operation. The management was in Washington in the headquarters?

Mr. CLARKE. The management of it in Washington was directly under Larry Potts, the Assistant Director of the Criminal Division, but I along with the Director on a daily basis was involved in overseeing.

Mr. EDWARDS. Did you have a team?

Mr. CLARKE. A team?

Mr. EDWARDS. Yes, a team in Washington?

Mr. CLARKE. Oh, yes, indeed.

Mr. EDWARDS. Were there Department of Justice individuals and lawyers part of this team?

Mr. CLARKE. They were not actually part of the team per se, but we kept the Department of Justice lawyers fully briefed on each development.

Mr. EDWARDS. But they were not in the discussions and the decisionmaking, I understand, from what you just said?

Mr. CLARKE. They were in the chain of communication and briefing and it was, in fact, the Department of Justice who raised the questions when we began to talk about gas, that led up to the discussions that you all had with the Attorney General this morning. It was as a result of those briefings that when we were talking about going into the interior and how we would deal with that that the Department of Justice began to raise questions, so they were certainly part of the decisionmaking any time they raised concerns or questions.

Mr. EDWARDS. The general plan was for the entire operation, the shrinking of the perimeter, the noise, the noise of slaughtered rabbits and other things, was that a part of the original plan?

Mr. CLARKE. I think I would defer to Mr. Jamar and Mr. Ricks on that.

Mr. JAMAR. As far as the noise making, the speakers were put in to communicate, to place—primarily to play some tapes that a negotiator had with Koresh. We thought it was a very effective tape and to play tapes that other people had made; example Kathy Schroeder who was released, she made a tape as a message back into the compound. We played that tape over and over. Constant messages to everyone in there.

I was not enamored with the idea of noise making. This was several weeks into this before we started this. We finally decided to do the noise making to deprive them of sleep primarily.

Mr. EDWARDS. Was this plan put in writing?

Mr. JAMAR. The part about the noise making.

Mr. EDWARDS. The general plan you followed for 51 days?

Mr. JAMAR. I think the general plans were, our goals were generally well-known in writing, but it was such a fluid and fast moving situation you could not really sit down with a very strong written plan for this type of thing. This was an absolutely extraordinary circumstance.

Mr. EDWARDS. Did anybody within the FBI have contrary views and think that another path should be followed?

Mr. JAMAR. A path from our plan to say that we are slowly squeezing them?

Mr. EDWARDS. Did everyone like the plan?

Mr. JAMAR. I think everyone agreed we would never assault the compound. We would never consider that.

Mr. EDWARDS. How about the Department of Justice, did anybody say we don't think this is a very good plan?

Mr. JAMAR. I think everyone agreed that from the beginning we would never assault the compound and that the idea was to negotiate a peaceful solution as best we could.

Mr. EDWARDS. But that was not the final plan?

Mr. JAMAR. The final plan was, we decided there were two overriding issues, to me, when we decided gas was necessary, one is the negotiation. And further, the communication within was going nowhere. We could talk, we could have the same communication, the same result, for the next 6 months, 3 months, a year. We could go on and on.

The other is that the circumstances were growing more dangerous for us and more dangerous for everyone in the compound to include the children in particular. Those two overriding issues changed our thoughts that it was time that if we are going to do anything for the next 6 months or 90 days or whatever it was, that further delay would not serve any purpose.

Mr. EDWARDS. Has this kind of a plan that you followed worked in similar situations?

Mr. JAMAR. The negotiations? Yes, sir. Well, similar only in that it was a compound full of people.

Mr. EDWARDS. I meant the perimeter reduction.

Mr. JAMAR. Yes, sir.

Mr. EDWARDS. The noise and eventually the gas and the tanks, has that ever worked before?

Mr. JAMAR. The noise part is really on the side here. I think the noise probably had no effect, except some sleep deprivation. But the closing of the perimeter and squeezing into them has worked very effectively in many, many other similar barricaded-subject situations.

Mr. EDWARDS. Did you seek outside advice and consultation on how to handle this different group of people? These people that you were dealing with were not the ordinary run-of-the-mill criminals. They were people, people call them religious people one way or another.

Mr. JAMAR. It was beyond anything we could imagine. Here is an individual who sees himself on occasion as the Messiah, the Lamb of God. Another group of people, adults, who were absolutely devoted to him. Absolutely devoted, particularly ones who were in the compound on the last day. These were people who had handed over their lives to him; their wealth, their children, their families, everything they had to him.

Mr. EDWARDS. I understand that.

Mr. JAMAR. He controlled them absolutely. We consulted with everyone we could imagine. We got letters and phone calls from all over this country. I had one person assigned to analyze those calls and analyze those people to see what they could do for us.

Mr. EDWARDS. Well, now we are getting letters to the editor and op-ed pieces and everything else to the effect that one of the worst things you can do with a group of people like this is to put them

under this kind of pressure; that it brings them closer together and cements their loyalty to their leader. Did somebody tell you that?

Mr. JAMAR. There was no question about loyalty. How do you intensify absolute devotion? This is devotion to a god in their eyes. We didn't drive them to him. We tried to separate them from him. That is the only thing we had. The devotion was absolute. There was no way to drive them any closer.

Mr. EDWARDS. Thank you very much, Mr. Chairman.

Mr. BROOKS. Carlos Moorhead, the gentleman from California.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Director Higgins, did I hear you say you had no idea how the press found out about this raid?

Mr. HIGGINS. No, sir, I did not say that. I said that I have some idea how they found out about the raid in a number of ways. I said how they found out about the raid and how the raid was compromised are the subject of an ongoing investigation and I didn't want to be specific about it here today.

Mr. MOORHEAD. The New York Times on March 28 has a pretty good idea. They said the editors at the ABC and NBC television affiliates in Dallas said they were called the day before the raid by Sharon Wheeler, a public information officer for the BATF. Ms. Wheeler said, "We have something big going down." What big in Texas was likely to be going down but this?

At least 11 reporters were at the scene before the raid began, but none have disclosed how they were alerted. They said the BATF had done nothing to prevent them from watching the videotaping of the raid as it got under way, and the agents turned hostile only after it became clear the raid was a debacle.

You know, stealth is a very important factor in any kind of operation such as this. Didn't you have an idea it may have been on the air and the people inside heard about it, if all the television stations knew about it? How could they help but know it?

Mr. HIGGINS. Again, I am not sure how they could help but know it. I have no information which indicates that anything we said specifically to any television station tipped them off to the specifics of the raid. I am familiar with the information that you saw reported in the New York Times. But I am also precluded as head of the agency responsible for making sure that however they got their information is determined and is fairly determined. I can't comment on those articles any more than I would leak the information as to how they got there. I would not do that.

Mr. MOORHEAD. You have no idea whether there is any truth to them or not?

Mr. HIGGINS. When I start discussing whether there is truth to them or not, then I have gone into discussing something that is critical to an investigation.

The one promise I have made is—

Mr. MOORHEAD. It is certainly critical to an investigation by this committee about what happened and how it came about. Considering that there were undercover agents involved in this investigation as well as individuals identified by the ATF as violent or who had a propensity for violence, why would the ATF have any communication with the print or broadcast media of any kind regarding the potential for law enforcement actions?

Mr. HIGGINS. Mr. Moorhead, it is critical to me to know why they were there also, and that will be reviewed by the Department.

What I am saying to you, it is also part of another investigation and so I can't prevent what has been reported in the press nor would I say it is not accurate in any respect. I am simply saying to you, there is an ongoing investigation and it is not fair for me to comment.

Mr. MOORHEAD. Are you saying anything that was reported by Sharon Wheeler or anybody else, it was against the rules of BATF, or she was violating her obligation to you?

Mr. HIGGINS. I will say without commenting directly on Agent Wheeler, it would be contrary to our rules in a situation where we were trying to maintain secrecy of an operation which is as dangerous as this to let the press know where that operation is taking place. Yes, I am saying that would be contrary.

Mr. MOORHEAD. What I want to know when you saw all the press people following you and you started down the last 250 yards and you said in your briefing paper, "The mission could still have been aborted during the drive down the 250-yard driveway if any guns were observed during this approach and they started firing,"—how come you went forward with the operation?

Mr. HIGGINS. That is a fair question. No. 1, I am not sure how close they were, but if I discuss how close they were and why the decisionmakers decided as they did, I am into the same dilemma I explained to the chairman. That is the purpose of the Department review. And all of these people there that day who made the decisions they did have been promised their actions that day will be fairly reviewed and they will have a chance to explain what they did. For me to draw a conclusion now, before that study, is simply unfair to them.

Mr. MOORHEAD. Well, four of the people were killed in your group that might have had their lives saved.

I saw the maps you have of this operation. Having been in the military, it looks like a rather simple, small village project of cleaning up. Were there any walls or warning devices or any way these people would know if you had gone in under cover of dark and gone in there? Did it have to be in broad daylight with a retinue of newspaper men trailing behind you?

Mr. HIGGINS. We chose the date—I think in response to one of the other questioners, I explained we did it based on information we had that that was the safest time to do it.

At night, had we had the same situation, instead of having four agents lost—I guarantee you nobody feels worse about that than the men and women of ATF—we would have had more loss, plus no ability to determine targets. That would not have been the time to do it. It was not the time when we had the information about where they would be. They were near the weapons at that time.

Mr. MOORHEAD. You gave up secrecy, but it looks to me like the Federal Bureau of Investigation announcing, "Good morning, we are in the process of placing tear gas in the building, we are coming in with tanks, we are not going to be assaulting you but we are going to break part of your building down with tanks." You know, if someone felt as these people probably did, that the Government was against them, by that time I would think they would

feel, as the tank hit the building and the building started coming down, "Gee, this is an assault"; the Government has been lying to us.

I think if someone was coming at me with tanks and the building I was in started coming down, I would think there was an assault taking place. And yet they were warned in advance to your coming in with tear gas and everything. You lost all the stealth you could have possibly had.

Mr. SESSIONS. That was on the morning of the 19th of April.

Mr. MOORHEAD. Yes.

Mr. SESSIONS. Mr. Moorhead, and what we did was announced they were coming in, we were coming in and gas it, because we wanted them to know we were not assaulting; we were not coming inside the compound.

Mr. MOORHEAD. When you hit them with a tank, I think they would have figured it was an assault.

Mr. SESSIONS. Well, of course, the progress of those CEV's and the putting of the gas, if you recall Mr. Clarke's discussion about it, those were put in the front left-hand side lower four windows systematically at first. We took fire there but we really didn't know we would take fire. We anticipated if we did not take fire or there was not a reaction, we would systematically put in gas.

We had always kept our promise with them, Congressman. Always kept our promise with them.

Mr. MOORHEAD. My time is up. I think there are a lot of things that BATF and the FBI can both learn from this thing, because it looks to me like you both screwed up somewhat.

Mr. SESSIONS. Well, we are prepared to learn. We also believe that we very carefully went about and calculated as to what we did to be sure that those people in there understood that they could rely upon what we were telling them we were doing or not doing.

Mr. MOORHEAD. Thank you very much.

Mr. BROOKS. Mr. Mazzoli, the gentleman from Kentucky.

Mr. MAZZOLI. Thank you, Mr. Chairman.

First of all, I thank all of you. And I know this is not an easy time for anybody in either Department, and I am sure that you understand that the questions we are asking are not meant to disparage the valor or heroism of the people, nor to reflect anything other than complete respect for the people who have maintained this operation, and, of course, to recognize the fact that lives were lost. And we grieve for all the lives, your people, Mr. Higgins, and the people in the compound. But we do, I think, as everyone has said, want to try to figure out what happened and, obviously, to try to improve our procedures for the future.

I guess in that sense I have to ask a question. I think, Judge Sessions, you have been talking about the careful planning and preparation and the careful undertaking here, and you did inherit a situation. So if this had been an FBI thing from the start, it might have been different. I mean, again, with complete respect, it could not have gone worse. Every single human being died. Every single human being died.

So the question I would ask is: Can you have, just sort of philosophically, a carefully planned, prepared, programmed action that finds every single person in the last analysis dead?

Mr. SESSIONS. I think that you can have and I think what happened here shows that you can have. We provided ways out for those people.

I was struck, Congressman Mazzoli, by a photograph that I saw in Time magazine this week—not taken by the FBI, not an FBI exhibit, not taken from an airplane, taken by a news photographer—that showed the front of the compound, the compound on fire. A blazing inferno. But when I looked at it, the whole front portion from the front door all the way over to the left of the compound was free of flame. You could see the holes that had then been punched into the compound so those people could get out.

You recall that Mr. Clarke said and Mr. Jamar said we elevated the plan when we took fire, but we originally intended to take gas and put it in there systematically, step back to allow them a time. But the point is, it was carefully planned and we did provide the way out, and some of them took the way out.

Mr. MAZZOLI. We only have the 5 minutes, and I guess it can be said then that you would consider this then to be as carefully planned as it could be even though everybody involved in this rescue effort actually perished.

Mr. Higgins, you feel the same way? Do you think this was a successful operation?

Mr. HIGGINS. Absolutely not. We carefully planned——

Mr. MAZZOLI. There is a difference of opinion here. I hear you say——

Mr. HIGGINS. We are talking two different operations. I am not commenting on the FBI plan. I think they did an extremely brave and dedicated job. I am commenting on the ATF plan.

I am saying the extent to which we planned it was very bit as detailed, and we can document that for you, but we had a tragic outcome. We were not successful in serving those warrants in a safe manner. That was the mission. Why we were not, if we made mistakes—and, obviously, there are some things that have been mentioned here——

Mr. MAZZOLI. So there is still some doubt in your mind if some mistakes were made.

Mr. HIGGINS. There is no doubt in my mind we had an unsuccessful outcome, and I am sure in an operation like this, when the Department gives it the review it is going to get, we will find mistakes were made and we will answer for those. I am not saying there were no mistakes made.

Mr. MAZZOLI. In your own statement you say if avoidable mistakes were made, you would try to correct them, so we assume there were.

I want to ask a quick question of you, if you could answer it fairly quickly. There have been any number of range of estimates of fire taken in the early incidents, I guess, on February 28. I think some estimates of 10,000 rounds coming out, 1,500 rounds going in. I was curious, how do you count rounds of fire?

Mr. HIGGINS. Well, we can count the rounds of fire that ATF agents had because we know how much ammunition each went in with and how much came out.

Mr. MAZZOLI. So we know 1,500 rounds.

How do you know the coming-out part?

Mr. HIGGINS. That would be a guesstimate.

Mr. MAZZOLI. Within a 45-minute period, when this fire fight took place, is that—if I were watching a movie, would that be fire pretty steadily for 45 minutes or are they bursts that happen so quickly—

Mr. HIGGINS. It would be bursts, and then I am sure quiet, and bursts. Most police officers, in their entire lifetime, may draw their weapon but never shoot it. So you can imagine a 45-minute to an hour fire fight.

Mr. MAZZOLI. Let me move on to one quick thing, maybe to both of you. Unfortunately, this was printed upside down so I have to look through this thing, but it appears from the picture there and from this photograph that we have that there was a body of water in front of the compound.

Mr. SESSIONS. That is correct.

Mr. MAZZOLI. Because earlier today I asked Ms. Reno about the question of fire equipment availability, and someone said because of the fear of being fired upon, that the firefighters were not there.

But I see a pond of water which could have been maybe replenished or built up in a period of time, because this was called Apocalypse Ranch, which, of course, signifies a kind of apocalyptic end, which could very well be fire, even though we had not anticipated suicide here.

But my question, I guess, is: Was it contemplated that this could have been used for the purpose of being a firefighting pond?

Mr. SESSIONS. That is my understanding, Congressman Mazzoli, but I think Jeff Jamar can answer that because he talked to the chief and knew about the plan as its evolved.

Mr. JAMAR. They brought truck pumps with them to pump from that pond when they came, yes.

Mr. MAZZOLI. Maybe one final question, Mr. Clarke. I recall your saying here because they had the 50-millimeter ammunition, which has a range I think of some 3,000 yards, that people could not get too close, fire equipment could not be brought in for that fear. And yet, if I understand, you say you dismantled fences and were taking cars away right in the shadows of that place.

How did you do that and with what equipment? Was that when the Bradleys were brought in? Was that done by tanks?

Mr. CLARKE. Yes, Congressman Mazzoli, the Bradleys were brought in initially, and when we were informed by the military that the specifics of the Bradleys that we had, they would withstand .50-caliber ammunition—however, we were then informed that he had weaponry in there that could blow the Bradleys 40 or 50 feet into the air—we then brought in the M-60 tanks. They are actually combat engineering vehicles, and it was those vehicles.

Mr. MAZZOLI. That actually pulled away the fences.

Mr. CLARKE. Exactly. During the morning, we did take heavy gunfire, machinegunfire, and we believe .50-caliber rounds were fired that morning.

Mr. MAZZOLI. Was Koresh ever out jogging?

Mr. CLARKE. Excuse me?

Mr. MAZZOLI. Was Koresh ever out jogging?

Mr. CLARKE. Not from February 28 to April 19, he did not.

Mr. MAZZOLI. Thank you.

Mr. BROOKS. Mr. Hyde, the gentleman from Illinois.

Mr. HYDE. Thank you, Mr. Chairman.

I really don't want to be redundant, but I do want to preface my remarks by saying I am definitely not faultfinding. Grandstand-quarterbacking is always invidious, and I have nothing but admiration and respect for all of you and for what you do as well as what you have done under great fire, and we are proud of you. So I want to say that. But there are some problems with this event.

It was a horrendous event and we do have some lessons that perhaps we can learn. And maybe some fault rests not on your agencies at all.

With respect to the question of no backup for your Hostage Rescue Team, fatigue played a part, and sometimes in a struggle with an adversary it is not always physical, it is mental, and sometimes we have to look in a more nuanced way at these conflicts. I know we are talking about guns, child abuse and all of that, but you are also talking about people with a very strange—to us—view toward the next life, and we have to be prepared for these things.

Now, why was there not backup for the Hostage Rescue Team? Why did they get stressed out, and why could they not be relieved? That is what I want to know.

Mr. SESSIONS. I will answer in part and then I will ask Mr. Jamar or Mr. Rogers to answer the question further.

The Hostage Rescue Team is a very highly trained team. It is, as we used to say in the football team, a 60-minute man. It is trained and does only what it does year-round. It goes through exercises of training repeatedly. It has experts in fire and firearms and firepower that exceed anything else we have in the FBI. It is the cream of the crop in terms of tactical capability. It can do more things to extract hostages than most of us can believe, but they are a very finely tuned and a very finely trained and tuned outfit.

They had been out there onsite with the numbers that you now know, that was their limited size, they were fully committed to it, and they had been there for 7 weeks.

Mr. HYDE. Why didn't we have more? I grant you, they are a superb machine, but we only had 50 of them in the whole country, isn't that true?

Mr. SESSIONS. It may now happen, Mr. Congressman. That will happen. We have not been successful in coming through the budgeting process.

Mr. HYDE. Now I am getting where I want to get. We need more Hostage Rescue Team people. Because if we have a hostage situation in the east coast and one in the west coast, why, we are in the soup, aren't we?

Mr. SESSIONS. I am quite willing to agree with you and would advocate for them.

Mr. HYDE. Has your agency, has the FBI asked for funds for additional hostage rescue people, being well aware that you are too limited given the budget situation of this country and this time?

Mr. SESSIONS. Yes, Mr. Chairman.

Mr. HYDE. You have asked for that?

Mr. SESSIONS. The year I became Director, in the fall of 1987, we had two distinct operations, one in Oakdale, LA, where a Federal correctional institution had a hostage circumstance with 125 hos-

tages, and 2 days later or 36 hours later, the Atlanta riots broke out with 125 hostages. The Hostage Rescue Team was committed already to Oakdale FCI. We could not take them into Atlanta. So that is a perfect example.

Mr. HYDE. What happened to your requests for additional funds for Hostage Rescue Teams?

Mr. SESSIONS. You are looking at a Director who is not persuasive enough to make it all the way through.

Mr. HYDE. Who wasn't persuaded by it? Anyone with white hair is very persuasive to me.

Mr. SESSIONS. It was I who was not able. We made it actually all the way through the process in the 1994 budget to the Congress, but it is not in our budget, as I understand.

Mr. HYDE. Well, did Congress turn you down?

Mr. SESSIONS. That is the first time that they have.

Mr. HYDE. Or did the OMB turn you down or did Justice turn you down or all three?

Mr. SESSIONS. Mr. Clarke reminds me it was also turned down in 1993, but that is the first two times that we have made it all the way to the Congress, yes.

Mr. HYDE. Turned down by Congress?

Mr. SESSIONS. That is my understanding.

Mr. HYDE. That is a mistake, in my judgment, on our part. I think you need the funds for additional backup for these situations, and you certainly have an advocate for that in me.

Now, as to the use of the clergy, as I heard——

Mr. BROOKS. Would the gentleman yield?

Mr. HYDE. Yes, with pleasure to my chairman.

Mr. BROOKS. With respect to budgeting, we have not been able in many, many years to have a real authorization bill for the Justice Department, which includes the FBI, because of recalcitrant Attorneys General. We have done fairly well the last year and we will do better now.

Congressman Neal Smith is chairman of the Appropriations Committee subcommittee that writes the appropriations bill for the Department of Justice. I believe that if we would importune him to reevaluate and restructure existing funding, they might be able to include money for an additional team of 50 people.

Mr. HYDE. I would be honored to be a junior importuner with you with your colleague Neal Smith. I think it is a great idea.

Mr. BROOKS. We might work on that. That would be a big help to them. It might require cutting something else because of restrictions on total funding, but that is a matter we can resolve with Mr. Smith.

Mr. HYDE. We can cut out a few swimming pools here and there.

Mr. SESSIONS. We have no swimming pools, Congressman.

Mr. HYDE. My red warning light is on, but I would just like to ask one more question about the use of clergy.

Now, Mr. Jamar said they had the benefit of Baylor University's religion department, and that is great, but I just wonder why you didn't get some clergy to do some negotiating, appeal to this man's ego, appeal to this man's belief? If, indeed, he so believed that he was the son of God or God himself, why not engage him in a theological debate, in a scriptural debate? Maybe even bring in promi-

ment clergy, such as—I am speaking of people who are well-known—Pat Robertson or Robert Schuler or even Billy Graham or somebody. And I admit this is very hypothetical, but find somebody to appeal to his ego, to get him to engage in a theological debate and perhaps seduce or coax an end to this, rather than conventional Elliott Ness—bang in the front door and everybody gets killed.

Mr. SESSIONS. Before Mr. Jamar replies, I will tell you that those are the kinds of things I would think that the Attorney General would want us to think through and reevaluate, but we did think through those things.

I will ask Mr. Jamar to discuss them.

Mr. JAMAR. Well, I think your comment on the Elliott Ness part, I think was unfair in many ways.

Mr. HYDE. I am just talking shorthand for head on—

Mr. JAMAR. We went through everything we could imagine. We were as deliberate and restrained as we could be. I think the thought of bringing in renowned clergy men as you suggest would have fed his ego to where we would have had to bring in hundreds.

Mr. HYDE. It might have gotten him out, mightn't it?

Mr. JAMAR. I don't think so. I think from his view of himself—I made this point before, how do you convince someone they are not the Messiah? How do you convince them they are not the person? This was his primary position.

OK, only the Lamb of God knows the Secret of the Seventh Seal. Now, neither I know it—he says he knows it. Now you find someone else who can explain it to me, then they are the Lamb of God. So that is the limit. So there is no in between for him. So he would use that argument over and over again. It would be just a redundancy for us and a stalling tactic for him.

Believe me, we thought of everything. We thought of Billy Graham. We offered him CBN. I wrote him a letter saying, you come out, you get 2 hours on CBN to broadcast your word.

Mr. HYDE. That is great. I am glad to know that. I think that is innovation in trying to coax him out. That is fine. That is what I am trying to find out. You did think of that.

Mr. JAMAR. Yes. But remember, here is a person who again abused religion, modified it to his needs. He was the messiah, he was the Lamb of God.

Mr. HYDE. OK. My time is up. I have more questions.

Mr. BROOKS. Mr. Gallegly, you had a request, sir?

Mr. GALLEGLY. Thank you, Mr. Chairman.

If you will just indulge me 10 seconds to apologize to Mr. Gekas. I incorrectly named him this morning as the Member who had said he had fallen asleep watching "Nightline," and it wasn't Mr. Gekas, it was another Member who had said he couldn't stay up, so I just want to set the record straight.

Mr. BROOKS. All right. Thank you.

The vote is on the rule for the rescission, and we will go over and vote. I hope we can be back at work at 5.

[Recess taken.]

Mr. BROOKS. The committee will come to order.

The Chair recognizes the gentleman from New Jersey, Mr. Hughes.

Mr. HUGHES. Thank you very much, Mr. Chairman.

I, too, want to welcome Director Sessions and Director Higgins and their colleagues. I really have a great deal of confidence in the expertise of both agencies, so my questioning, like most of my colleagues, is not questioning their expertise. We are trying to learn from this experience.

Director Higgins, I have a number of questions insofar as the February 25 signing of the complaint and the issuance of the search warrant. My question is, the affidavit is replete with substantial evidence. I can't believe that that was just accumulated overnight. When was that evidence compiled?

I mean, there was an awful lot of evidence that goes back to 1992, which suggests that this cult was collecting a lot of ammunition, explosives, and firearms of all kinds.

Mr. HIGGINS. We began to collect the information in, I believe, June 1992 when we were notified by a local sheriff's department that they felt like the compound had received some possible explosive materials and other things. So we began to develop the information then. But what we were dealing with were parts as well as explosive materials that only become violations if you make something out of them.

Mr. HUGHES. I see. When did Bob Rodriguez go in undercover?

Mr. HIGGINS. January 5.

Mr. HUGHES. January 5. When were you able to confirm the information you had collected from neighbors and others that there was this horde of weapons in the compound?

Mr. HIGGINS. Without going into all the specifics, and I think Congressman Fish asked me if we had probable cause by February. Through the miracle of C-SPAN, I was corrected by the headquarters staff almost after it was out of my mouth.

We had a review in the headquarters office in December with respect to whether we had probable cause. We decided at that point we did not, so we continued to gather information. We brought people in from Australia, we got the undercover agent in, we interviewed any number of people, including neighbors. They are all in the affidavit so I won't repeat them.

Mr. HUGHES. When was it determined you had probable cause?

Mr. HIGGINS. I think it was the middle of February.

Mr. HUGHES. Middle of February. Press reports suggested that Bob Rodriguez came out and alerted the ATF to the realization that they had been tipped. Is that accurate?

Mr. HIGGINS. I wouldn't say what is in the press reports because I don't know of everything that has been reported there. As you can see in the affidavit, though, it indicates that he came out and reported some conversations. I have no quarrel with the accuracy. This is one of the issues that I said was going to be reviewed by the Department in response to an earlier question.

Mr. HUGHES. I understand it is going to be reviewed, and I don't want to do anything that is going to compromise your ongoing investigation. My only question is: Is that accurate?

Mr. HIGGINS. What is in the affidavit I think is accurate.

Mr. HUGHES. It is accurate. So you had information that they were aware of what was occurring.

I also understand that you had helicopters in the area, and they took fire before the actual raid. Any substance to that?

Mr. HIGGINS. No substance to that. The helicopters were there. They took fire simultaneously with the raid team.

Mr. HUGHES. There have been some suggestions that ATF agents were not fully briefed insofar as the nature and extent of the weaponry they were to confront, and that agents requested more firepower than their service revolvers, and that was turned down. Any substance to that?

Mr. HIGGINS. No substance to that, and specifically with respect to more firepower than revolvers. In fact, they had more firepower. They had shotguns, MP-5's, and other types of weapons that they had requested.

So the short answer to that is, the raid team planners developed a list of not only the equipment but the ammunition and weapons they needed, and all of those requests were provided.

Mr. HUGHES. I have received information also that when the agents mobilized in Waco, TX, you had 100 agents roughly, many in battle fatigues, and that the population saw this mobilization. It was the talk of the town. Any substance to that?

Mr. HIGGINS. We had a number of agents there. The agents who were actually part of the SRT's trained and stayed in Fort Hood and assembled the morning of the raid, and that was approximately—

Mr. HUGHES. What time was that?

Mr. HIGGINS. I will check and get it exactly. Approximately 8 that morning.

Mr. HUGHES. The raid was at 9:30?

Mr. HIGGINS. Closer to 10, I believe.

Mr. HUGHES. OK. I understand that the agents were using walkie-talkies which were being monitored locally. Any substance to that?

Mr. HIGGINS. No, we had a DES system, which is an encrypted secure system, so nothing to that.

Mr. HUGHES. There also was some information that has come to my attention that once the squad leaders were eliminated, there was no ability to communicate from squad to squad. Any substance to that?

Mr. HIGGINS. Incorrect.

Mr. HUGHES. That is not correct?

Mr. HIGGINS. Not true.

Mr. HUGHES. OK. Did ATF at any time consult with any psychological or psychiatric experts on mind control, cults or what have you?

Mr. HIGGINS. I would have to provide that. I can't say categorically whether we did or not.

[The information follows:]

ATF did not consult with any experts, psychiatric or otherwise, on mind control or cults. However, contact was made with the ATF S/A assigned to the FBI Behavioral Science Unit, Quantico, Virginia.

Mr. HUGHES. Was the Department of Justice in the loop at this point at all?

Mr. HIGGINS. The Department of Justice was in the loop. We had earlier contacted the FBI with respect to whether they were working anything on this group.

We were intimately involved with the U.S. attorney's office, as you know from your past experience, we would be. We also had the day of the raid personnel there from INS and I think one person from DEA as well as personnel from State and local agencies.

Mr. HUGHES. I have some other questions which I will submit to you.

Mr. Jamar, I just have one question. I am concerned about the psychological warfare. I have received some information from some experts, including psychologists and others who have communicated information to me, that the psychological warfare, if anything, might have been damaging.

Apparently from your testimony earlier, you indicated that you were not particularly enamored with the psychological warfare that was being directed to the compound. Was that accurate?

Mr. JAMAR. Congressman, you mean the noise?

Mr. HUGHES. Yes.

Mr. JAMAR. We put the speakers in, as I said earlier, to communicate.

Mr. HUGHES. To me, that is more than just communications, the noise.

Mr. JAMAR. We didn't put the speakers in to start to play music. This is several weeks into this siege.

Mr. HUGHES. Is the characterization correct that you were not too enamored with that?

Mr. JAMAR. My memory at the start was I remembered the business with Noriega. That is what was in my mind.

Mr. HUGHES. Who was enamored with that?

Mr. JAMAR. Nobody was that much. We put the speakers in to make announcements to them, in order to play tapes to them. I am talking about tapes of conversations, not noise.

Mr. HUGHES. Can you furnish me with the experts that you consulted, if in fact they were consulted, with regard to the noise? Can you furnish us with the experts who recommended to you to utilize those particular techniques in this situation?

Mr. JAMAR. I would be happy to give you a response to the question on why was sleep deprivation noise used. It was not so much—people characterized it as psychological warfare. It wasn't really that purpose. The purpose was sleep deprivation.

Mr. HUGHES. I saw some agents quoted—and that doesn't mean it is accurate, indicating that it was psychological warfare.

Mr. JAMAR. I don't know who those agents were.

Mr. HUGHES. OK. Well, let me ask you: Does the FBI have any information in their records that would give you any insight into cults around the country?

Mr. JAMAR. Yes, our behavioral science psychologists have made indepth studies, and we had a white paper on cults that was very, very useful to us.

Mr. HUGHES. Any idea how many cults there are and where they are located in the country?

Mr. JAMAR. Are we talking about cults generally? We tried to apply—

Mr. HUGHES. There are all kinds of cults. I am talking about cults where you have one dynamic figure like an egomaniac like Howell, who is basically the central figure in the cult. Such a person has great influence over cults, over their membership because he is a master manipulator. He manipulates his victims. He manipulated the FBI during the entire time.

Mr. JAMAR. Absolutely.

Mr. HUGHES. And he was a master at his trade.

My question is: Have we compiled any profiles, any information that will help us understand who they are, where they are located, and their techniques?

Mr. JAMAR. We can't investigate cults generally. We have no authority to do that. But as far as the checklist on cult leaders, on psychopathic cult leaders, you just described several of the traits.

David Koresh, the white paper we had, we could just check them right off on his conduct and his conversations. He fit a lot of the psychopathic leader traits to a T.

Mr. HUGHES. Well, the one thing we can do is compile information on basically how they manipulate and how to deal with them when they begin to manipulate. We can do that, in my judgment, consistent with first amendment rights.

Mr. JAMAR. I think in this case, it is a very unique case study, there is no question about that on how to deal with the person who has that control over a group of people and a master manipulator. There is no question about that. But the FBI has no authority to accumulate information on cults generally, investigate them generally.

Mr. HUGHES. I am not saying investigate them generally. I am talking about identifying those that are basically committing acts such as acquiring weapons.

This apparently was over a period of time and Koresh basically had that kind of mind control. You are saying that—

Mr. JAMAR. Congressman, we have to have specific information that they are about to commit a crime or they have committed a crime. We can't get intelligence information on people, whatever their motivation is. In this country, nobody wants us to be able to do that.

Mr. HUGHES. I want you to compile information on only those individuals who have committed infractions of law. You must have probable cause to believe, as ATF did in June, that is not improper. And it seems to me we could at that point begin to compile a lot of information.

Mr. POTTS. Then, sir, we don't just compile information if we have information that they are violating the law. Then we do an investigation and we follow through with that with getting probable cause and making arrests and doing search warrants, but not just to compile information.

Our behavioral science people have done a great deal of work with this. You have heard a lot about the serial killers and the work they do in terms of going out to try to interview people who have been involved in those kind of crimes. They have tried to develop the same kind of profiles of people who are involved in manipulations and these different types of crimes.

The people that we had involved from the FBI are the people that are called on all over the world to do profiles of criminals. They are called on all over the world to do negotiations and to teach negotiations in England, Scotland, all over the United States. So we have done some of that, what you are suggesting.

Mr. HUGHES. Yes. We don't have to wait for a crime to be committed to compile that kind of information.

Mr. POTTS. Well, on individuals, we can't go out and just start—

Mr. HUGHES. I understand.

Mr. POTTS [continuing]. Compiling information on a cult.

Mr. HUGHES. But you obviously have some behavioral information you have compiled.

Mr. POTTS. On people who have committed crimes, then we go out and interview them.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Hughes.

Mr. SENSENBRENNER, the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I want to continue my line of questioning on what are the lines of authority and the chain of command that I asked the Attorney General this morning.

So, Judge Sessions, first, did you or any other FBI officials brief Webster Hubbell on this matter after the siege started in February?

Mr. SESSIONS. I do not recall, but I can bring it back up on the first occasion when he was briefed. But I think it was in the presence of the Attorney General when that was done so far as any briefing where I was.

Now, if there was another briefing, the flow of communications—pardon me, the flow of information had a number of ways of going from myself to the Attorney General on occasion, from Mr. Clarke or from Mr. Potts on occasion over to either the Attorney General or Judge Hubbell or to Mark Richard. There was—or to Jack Keane, who is the Deputy or the Acting Assistant Director of the Criminal Division, whichever title he had.

So the information flowed in a number of ways. It was a fairly open system of being sure that information got to the Department of Justice on the progress of the events there in Waco.

Mr. SENSENBRENNER. Did Mr. Hubbell ever get any information that was not copied to or sent to the Attorney General's office after Attorney General Reno was sworn in?

Mr. SESSIONS. I can't tell you that because I don't know. I know that we have provided information presuming that it would go to the proper level. And, for instance, if I talked with Judge Hubbell, I presumed that it would go to the Attorney General.

Now, I do not know what he actually did.

Mr. SENSENBRENNER. It would go from Judge Hubbell to the Attorney General rather than from you to the Attorney General?

Mr. SESSIONS. There are some occasions where I talked to Judge Hubbell, some occasions where I talked to the Attorney General. She was very, very busy. She was always available. She has never failed to return calls. But sometimes information was communicated that way.

Mr. SENSENBRENNER. Did you ever brief the President directly on this issue?

Mr. SESSIONS. No, sir, I did not. I spoke with the President on the first day, and that is the only occasion when I spoke with him.

Mr. SENSENBRENNER. After the fire broke out in the compound on April 19, whom did you brief?

Mr. SESSIONS. When the fire broke out just after 1 our time, just afternoon that time, the Attorney General had left the operations center. But as I recall, Judge Hubbell was probably still there in the operations center, and Mark Richard was there as well. The Attorney General went to the third circuit conference at about 11:15 our time and came back at about, I think it was, 1:30 or 2.

Mr. SENSENBRENNER. Do you know if the FBI ever briefed Judge Hubbell outside of Washington, DC?

Mr. SESSIONS. No, sir, I do not.

Mr. SENSENBRENNER. Does that mean you don't know or that the FBI did not know?

Mr. SESSIONS. I believe that we did not, but I do not know that. Mr. Clarke may know that or Mr. Potts or somebody sitting at the table.

Mr. POTTS. We never briefed Judge Hubbell outside of Washington, DC, no, sir.

Mr. SENSENBRENNER. I have a couple of questions in my remaining time relative to the CS tear gas agent. Is it possible that someone who had inhaled this agent would be so debilitated that that individual could not escape a fire within the confines of where that individual was?

Mr. SESSIONS. I remember the descriptions that Dr. Salem gave to us of what that would do, and we have some material on that, and I would be glad to provide a specific answer. I don't know that it incorporates disorientation, but it may be. I will ask Mr. Potts if he has that information.

Mr. POTTS. It doesn't debilitate. It irritates. It is an irritant. It makes you want to get out and get to fresh air, but it does not debilitate.

Mr. SENSENBRENNER. Well, at the beginning of your testimony, Judge Sessions, you passed out a packet that contains a picture of the compound on fire as well as a floor plan of the compound where the bodies were found. Eventually the fire was put out and the place was destroyed. I have that picture and the floor plan here.

I know that you have had it blown up and they are off the easels now, but if you look at the fire in the compound at the beginning of the conflagration there, you will notice that the front parts of the building are not involved in the fire; it is only the rear parts of the building.

According to that floor plan, which is now back up on the easel, 27 of the 46 bodies were in the front part of the compound right here, and all of them were within 30 feet of where the tanks had busted holes to inject the CS gas.

Has there been any conclusion that has been reached on why none of these people got out? They were so close to the tank holes, they certainly would have had the ability if they so desired to get out.

Mr. SESSIONS. I don't know that the medical examiner has drawn any conclusions nor the fire specialists have drawn any conclusions. It was that type of photograph that was a different—taken from a different level that was in Time magazine which showed so dramatically that the portions you referred to in that photograph were not on fire but were in fact free of flame, and that the holes that had been opened up to allow people to get out were obviously available.

Mr. POTTS. I would also add, sir, that if you saw the person laying on the roof, and we are begging him to come off the roof and he didn't want to come off, and then finally he caught on fire and rolled off, and the fact that our HRT agents got out of Bradley vehicles to chase a woman back into the fire. She came out and then turned around and ran back into the fire.

We also have some statements from some people that were not—I don't think it is proper to release now—those who did come out, which I think will help the investigators determine that there were people in there who just chose not to come out, not because they were debilitated, they just chose not to come out.

Mr. SENSENBRENNER. Well, let me say as a survivor of a house fire myself, that fire marshals and law enforcement told me that I never should have survived. When the building that you are in is on fire, the natural reaction is to do what you have to do to get out as long as you are able to do so, and I was able to do so long enough to be able to get out. If the CS gas did not debilitate the people so much that they were so disoriented that they didn't know what was happening in the building, there ought to be some type of medical evidence that is submitted either to this committee or to someplace else to that effect. Because, given these pictures and the floor plan of where the bodies are, the questions that I have asked are going to be asked in other places.

Mr. POTTS. Remember, they all had gas masks. Remember, the medical examiner is still doing some examinations and there may have been other causes of death, and there may well have been—they may have been held in there, so I think you have to consider all those options, and gas is the least probable reason, the absolute least probable reason that they didn't come out of there.

Mr. SENSENBRENNER. Mr. Chairman, I have one request, and that is that the exact role of Mr. Hubbell has been the subject of some discussion but with no precise answers by both Attorney General Reno and Judge Sessions' testimony. I am concerned that there is a possibility that both the FBI and the Attorney General may have been out of the loop during the decisionmaking process. Since the Attorney General is the head of the Justice Department, I would request at some future hearing that you call Mr. Hubbell to come and testify as to what his involvement in these events are to make sure that the hearing record will be complete. Thank you.

Mr. BROOKS. We would consider that. The Chair recognizes the gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman, and thank all of you.

I wanted to go back to one of the lines of questioning Congressman Hyde had about the funding for the Hostage Rescue Team. I have got some documents here showing that in fiscal year 1990 it

was the Department itself that turned down the request and that two gentlemen named Otto and Ravell said that there wasn't any need for it because, through training and coordination with the field SWAT teams that they had and joint training exercises, they could make up the same capacity. Was that ever tried?

Mr. SESSIONS. Was which ever tried?

Mrs. SCHROEDER. Did you ever try to implement this request?

Mr. SESSIONS. In—

Mrs. SCHROEDER. Or this suggestion that came in-house?

Mr. SESSIONS. That is that the HRT increase training and coordination with field SWAT?

Mrs. SCHROEDER. In here it says that they recommended that the HRT train jointly and regionally with the different SWAT teams and that would give you the same capacity as having another HRT.

This was a recommendation that was sent up here and why they said they didn't want to fund this or why it was turned down. I wanted to know if Mr. Ravell and Otto's recommendation was ever carried out.

Mr. SESSIONS. I will ask Mr. Rogers to answer specifically as to what training has gone on between the HRT and the regional SWAT so that you will actually have that.

I know that it is always our interest to be sure that our regional teams are as well prepared and as highly trained as we can possibly do them. That still will not bring them up to the kind of capability that HRT has because it is a 24-hour around-the-clock, around-the-year operation. I will ask Mr. Rogers to come and answer that question.

Mrs. SCHROEDER. Or you can do that for the record.

Mr. SESSIONS. All right.

Mrs. SCHROEDER. Here is my concern, because I have a lot of questions, but my concern is, well, they are saying the Congress didn't fund it. The Congress never got it in 1990. It was turned down in the Department, and this was recommended, as I understand it, in the Department as a good alternative. My question is: Did you try it, and if it wasn't a good alternative did you go back to those people and what is that whole track record on that? Because I think the funding of the additional HRT has become a big issue.

Mr. SESSIONS. One thing you do know is, as I said this morning or earlier, I tried unsuccessfully, and I would say that I failed to make the case for it, but we went back through the same process for enlargement in 1991, in fiscal year 1992 and fiscal year 1993 and fiscal year 1994, so it has been a constant surge, but that is separate and apart from the training issue.

Mrs. SCHROEDER. And it wasn't until 1993 that you got over the Department hurdles and got it at least to the congressional hurdle?

Mr. SESSIONS. That is correct.

Mrs. SCHROEDER. I would be interested to know why there seemed to be some feeling in the Department why there were other ways they could do this. Let me ask a couple of questions, and I really don't even know whom quite to direct them to.

No. 1, up here we hear because of the funding cutbacks there is such pressure between different agencies to get credit for things, whether it is drug raids or anything else, that there is terrific pres-

sure to get credit to say this is the notch that this agency gets in its belt for this. Could that be? Do agencies truly feel that kind of competition? Has the budget really put that kind of competition on them, and is that some of the problems that might have created some of the leaks to the press early on where people thought that this could be quite dramatic?

I also had a question about—we keep hearing long term about all this involvement that David Koresh has had with the law, INS problems, child abuse allegations in other States and so forth, Australia supposedly filed on him in 1987, concerns about him. How long have you been tracking this man? I mean, how far back does his file go? This didn't just start in 1992 when people looked at this. Again, is it because law enforcement is so overloaded?

The average American is saying, wait a minute, if all this long history and all that footage from Australia, and they have been upset about it, why didn't something happen long ago as they ask the same question about the gentleman sitting in New Jersey wondering why wasn't he deported long ago. And then I guess my final question is: When you saw him as a cult leader and there was absolutely no question that that was what he was, did it ever occur to anybody that rather than make this dramatic raid that it might be smart to serve him when he was outside the compound?

Apparently before the raid he would be outside the compound. I mean, he did leave the compound, he did things like jog or he went out and ran errands or something. Did it ever occur to them that if they served him or took him in, then the rest of the people back in the compound wouldn't have been—they would be in a different position because their leader would then be gone and psychologically and everything else, that the chips might fall differently?

So those were the three things I would like some direction on, if possible, and I would like the other one answered for the record, if that is OK.

Mr. HIGGINS. If I could respond to you in reverse order of your questions. Why didn't we arrest him off the compound? That was one of our earlier options and something that we had considered. By the time we had probable cause, our best intelligence was that he no longer intended to come off the compound and would not if we simply approached the door and said, as is done in some cases, we have a warrant, would you accompany us. We were told he would meet that with violent resistance, so the option to take him peaceably somewhere away from the compound was not available.

Let's go further. We considered the fact that he wasn't the only violent individual there, plus we had explosives and illegal weapons on the compound with armed people. There would have been no element of surprise at that point because they knew their leader was arrested. That would have been a difficult, very dangerous situation anyway, so we did look at that as an option.

We chose an option we thought would be safer, and as you know, it did not work, but that was the option that we chose.

The second is we began our investigation in June 1992. I know there were other investigations made by other people and they would be the ones that you should ask as to what they found or what they did not find, but from ATF's standpoint we began in June 1992. Your first question was——

Mrs. SCHROEDER. The press competition.

Mr. HIGGINS. Is there so much competition that you try to get a notch and get funding; I have heard it said that we did it to impress our new bosses at Treasury, or because we were getting ready for a hearing. I have heard several reasons.

To suggest that anyone would send people into a dangerous, violent situation like this because they were somehow trying to get credit or increase their budget is offensive. I know you are not saying that, but I am saying that we are offended by that, and anybody who thinks that that is even a possibility places a whole lot less value on human life than I do and the people who I work with, so I will respond to it that way. Competition does not drive this. That is not the issue.

Mrs. SCHROEDER. But then there is the question of how did this information leak to David Koresh way before even the raid? I mean, and before the raid so that he would have known not to leave the compound?

Mr. HIGGINS. That is an excellent question, and we will find the answer to that. That is being investigated. There will be a full reporting not only to this committee but I am sure in the legal system and I am sure by the departmental review.

Mr. SESSIONS. If you are asking about the first question that I could respond to, if you would like me to respond to it for the FBI.

Mrs. SCHROEDER. Yes, how long has the FBI had a file going on David Koresh?

Mr. SESSIONS. Our first instance of entering into this circumstance came on the afternoon of the 28th of February when I called Director Higgins to see if we could be of assistance. He had also just lost four agents, and I called to give him my condolences and those of the FBI. We were at the time involved in the World Trade Center bomb investigation.

Mr. JAMAR. One thing the Director might not be aware of, there was a congressional inquiry by Congressman Edwards of Texas in February, and we made inquiry as to David Koresh, and we ended up contacting ATF, among others, the DPS in Texas and others, and determined the extent of their investigation right before that.

Mrs. SCHROEDER. But no one had the INS allegations or any of those things from before, so there was not a file on him, an FBI file on him?

Mr. JAMAR. No, ma'am, I am not aware of any other FBI files on him.

Mrs. SCHROEDER. OK. Thank you very much, Mr. Chairman.

Mr. BROOKS. Thank you very much. Mr. Gekas, George Gekas, from Pennsylvania.

Mr. GEKAS. Thank you very much, Mr. Chairman.

I will proceed to Director Higgins first, if I may, with the affidavit of February 28, 1993. I suppose somewhere in here language of the affiant can be interpreted to state that with respect to all the items that are listed, that the people within the compound had the ability to put them together for illegal purposes. In reading the affidavit I don't see that specifically stated as such. It can be concluded from the totality of the affidavit that that is what is meant, but can you point to me specifically where it is stated that the list

of items were being used to put together elements of illegal devices?

Mr. HIGGINS. I will get you more information, but I believe you are commenting and citing the arrest warrant as opposed to—I believe there is still a sealed search warrant, so that may well be where it is, so I couldn't comment more on it, but if that is not the case, I will provide you the right information.

Mr. GEKAS. Yes, I would like to have that.

Mr. HIGGINS. Certainly.

[The information follows:]

On the affidavit, dated February 25, 1993, case number W93-15M, there are four references to the assembling of items to manufacture illegal devices. The first reference appears at page 11, paragraph 5. That reference talks about having the parts necessary to assemble explosive devices. The second reference appears at page 12, paragraph 3. That reference talks about having the parts necessary to assemble machineguns. The third reference appears at page 15, paragraph 2, and states that the affiant believes that Howell and/or his followers are unlawfully manufacturing machineguns and explosive devices. The fourth reference is found in attachment D. It refers to property being concealed on the premises that, when assembled, would constitute machineguns or destructive devices. There are no specific references to anyone having been seen assembling items to manufacture illegal devices.

Mr. GEKAS. But back to the listing of the items that were called explosive paraphernalia on page 6, a quick perusal of that list doesn't reveal too many items that by themselves would be termed "illegal," is that correct? If they were not used in combination with other or put together with other things to create other kinds of explosives, is that correct?

Mr. HIGGINS. That is correct. It is the manufacture of various types of devices or automatic weapons that makes them illegal.

Mr. GEKAS. For instance, 30 to 40 cardboard tubes is not an illegal substance or item, nor is 90 pounds of aluminum metal powder. How about the grenade launcher, that would be illegal, wouldn't it?

Mr. HIGGINS. It depends on whether it were live or not. The only problem I am having in this conversation is we are discussing things that will probably be presented as evidence at some point, and I don't want to jeopardize that. If the point is that the things in and of themselves are not violations of the law, you are accurate.

Mr. GEKAS. All right. But I would like to have a followup memo on that, if I may.

Mr. HIGGINS. Absolutely.

[The information follows:]

No, unless the grenade launcher is an M-79.

Mr. GEKAS. To Judge Sessions, if February 28 was day one, as I suppose it was of the 51-day ordeal and the fire, then the deaths occurred on the 51st day. Of course, deaths occurred on the first day as well, on day one; is that correct?

Mr. SESSIONS. Right.

Mr. GEKAS. What day was it when people first began leaving the compound voluntarily? Did that happen before the FBI got into it?

Mr. SESSIONS. There were several of them. I have a listing here somewhere in my material that shows the people who came out very shortly. There were a grand total of 36 people who came out over the period of time, including the 21 children.

Mr. GEKAS. Now what I am asking is, if day 1 and day 51 are the two salient points, on what day did people inside the first compound emerge?

Mr. SESSIONS. Very early on. The first group came out on 2-28, there were one, two, three, four of them.

Mr. GEKAS. On the same day, on day one?

Mr. SESSIONS. Yes, on the 28th. On the first, which was the next day, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 came out. On the next day, on the second, 1, 2, 3, 4, 5, 6 came out. On the next day, 1 came out; on the next day after that, on the fourth, 1 came out. On the next day after that, the fifth, 1 came out. On the 12th of March, 1, 2 came out. On the 19th of March, 1, 2, came out. On the 21st of March, 1, 2, 3, 4, 5, 6, 7. On the 23d of March, 1 came out.

Mr. GEKAS. On the 23d of March, 1 came out and——

Mr. SESSIONS. Then what Mr. Potts was telling me is on the 4th of April a man came out but he was not a true member. He was the one that had come into the compound and then came back out.

Mr. GEKAS. OK. So even if we discount April 4, up to March 23, was it, we had bits and pieces from people who emerged voluntarily and who came into your jurisdiction?

Mr. SESSIONS. They came out, that is correct.

Mr. GEKAS. So, in some ways it can be concluded up to then that all of the tactics that were being used for whatever purpose were being successful, or is it your conclusion that they were expelled from the compound?

Mr. SESSIONS. You would like to think it was the former, I would like to think it was the former, but the negotiators believe that they were not successful, that in fact these people came out because Mr. Koresh wanted them out, that they either were inhibiting some objective that he had or they were a problem within the compound or not dedicated enough or that he wanted to use them as spokespersons outside the compound.

Mr. GEKAS. Do you have statements to that effect from the people who emerged?

Mr. SESSIONS. That is my understanding, that the negotiators felt that way. Mr. Jamar is here and Mr. Ricks is here. They may be able to tell you further about those particular people.

Mr. JAMAR. There is no question that the three that were expelled for drinking, they wanted to stay in, and they were expelled. A lady, Mrs. Hollingsworth, was 59 years old and ill. She wanted to stay in, and in fact he made a nurse come out with her who wanted to stay. In fact, there was a news report of her that I saw that she regrets not dying with her friends. And so everybody who left either was thrown out or left involuntarily for the most part.

I think Livingston Fagan was sent out as a spokesperson. There is no question about that, he was sent out with a mission. Each one of them, except for the children were—there was a special reasoning why Koresh didn't want them in the compound.

Mr. GEKAS. But what I am getting at is was there any reason to feel, since you didn't know anything before these people started coming out, as to why these individuals might be treated different?

Mr. JAMAR. I just recited for you. I am sorry I didn't make it clear to you. Three of them were expelled. He threw them out because they were undisciplined.

Mr. GEKAS. I understand. You had no reason to believe that those who remained after March 23 would not be expelled for some other reasons?

Mr. JAMAR. I think it could have happened, but I think the ones who were left were the ones he was most comfortable with, and devoted.

Mr. GEKAS. That is in retrospect. Did you make any judgments that there were other people with whom he might be having discipline problems and might expel some others?

Mr. JAMAR. There was 26 days of no one coming out and the other was 12 of them we know were his biological children, and he said, you will never get my biological children.

Mr. BROOKS. Thank you very much, Mr. Gekas.

Mr. GEKAS. I thank you, Mr. Chairman.

Mr. BROOKS. Next the Chair recognizes Mr. Schumer, the gentleman from New York, for 5 minutes.

Mr. SCHUMER. Thank you, Mr. Chairman, and I have some questions on guns, but I have been asked by my colleague Chet Edwards who has shown me a memo that was sent to the local FBI agent in Waco, in February 1992 with lots of details about some of the practices of Mr. Koresh, and he, Congressman Edwards never got a response on that. So I would just ask in writing that you let us know what happened.

Mr. JAMAR. May I answer that, Congressman? What happened, we did respond, and he has been told personally and given copies of our response.

Mr. SCHUMER. All right. Well, let me go on and ask questions with guns. I would like all of that entered into the record, if I might.

These are questions I guess I would like to ask Director Higgins. First, I have been told that large numbers of guns have been removed from the scene and that a good number of those have been converted to machineguns. Does it get in the way of your investigation for you to confirm that? If it does, I don't want you to, but if not——

Mr. HIGGINS. Since the crime scene search hasn't been completed and there is still an outstanding warrant that will be returned at which time what was seized will be made public, I cannot comment. I can say that we probably underestimated what was in there, though.

Mr. SCHUMER. Underestimated?

Mr. HIGGINS. Yes.

Mr. SCHUMER. Let me ask you these questions about that. Again, I am told this is not what was removed from the scene but that the cult had an arsenal of 200 assault rifles, and .50-caliber rifles, most of which had been converted to machineguns.

Let me ask you this question, the questions about those things. BATF has no record, I presume, of any sales to David Koresh or anyone else in the cult of machineguns because, as you know, you have to get the ATF's approval to buy a machinegun and own and possess a machinegun, is that correct?

Mr. HIGGINS. We have no record of it.

Mr. SCHUMER. No record, OK. So obviously what he did, and again I am trying to build a legislative record here, I am not trying

to interfere with your investigations. What he did was to buy the weapons as semiautomatics and then convert them to machineguns, is that fair to say?

Mr. HIGGINS. That is what he is alleged to have done.

Mr. SCHUMER. To do that he had to use parts that are identifiable as machinegun parts, parts that are only used in machineguns, is that fair to say as well? I guess unless he had his own metal shop.

Mr. HIGGINS. Again, you are discussing allegations, and I will just comment and say those are the allegations.

Mr. SCHUMER. Can you think of in your expertise on firearms, is there any reason why someone who is not an approved machinegun owner that they should be entitled to purchase machinegun parts?

Mr. HIGGINS. I can't right here, but that doesn't mean I couldn't think of one, but I don't know of any at this point.

Mr. SCHUMER. I am sure you have thought of it before. You can't think of any?

Mr. HIGGINS. No, but if I do I will provide you some information. I can't think of any.

Mr. SCHUMER. I can't, either.

Finally, affidavits filed in Federal court indicate that he used kits, this public record as I understand it, M-16EZ kits, M-16 car kits to assemble the weapons or convert them to machineguns. Can you tell me what these are and how easy they are to obtain?

Mr. HIGGINS. I really don't want to discuss the details. I know that is in the affidavit with respect to—

Mr. SCHUMER. I am just asking you how you, not how he obtained them, but how easy they are, how available they are, and how easy they are to obtain?

Mr. HIGGINS. A lot of the parts you are describing are easily obtained, you don't have to have a license to sell them nor a license to buy them, and you can ship them interstate.

Mr. SCHUMER. A lot of them in the mail, all right. OK.

Let me ask you this: We know that they had .50-caliber rifles which they converted to machineguns and .50-caliber bullets can penetrate walls and vehicles. I am told your own agents don't use .50-caliber weapons because it is too risky in terms of killing innocent bystanders. Is there any legitimate nonmilitary purpose for this type of large commercial, this kind of large caliber ammunition to be available?

Mr. HIGGINS. Well, it is true, we don't allow our agents to use them. It would only be speculative on my part to say whether or not there is any use for it. I don't know a use, but that doesn't mean there isn't some use. I am not into guns as a hobby.

Mr. SCHUMER. No, but you are the Director of ATF.

Mr. HIGGINS. And dealing with illegal guns.

Mr. SCHUMER. Has anyone in the agency, have you found any legitimate use? Why are these things sold? That is what I am trying to get at. Why shouldn't we in Congress outlaw them being sold?

Mr. HIGGINS. I can't speak for everyone in ATF, but certainly Congress, if they decide that is not the type of weapon that should be readily available, has the power to enact that law. I am just not sure where you are going with the question.

Mr. SCHUMER. That is where I am going. I want to know if you have thought of any legitimate use or any complaint about banning the sale of this type of ammunition so long as you make sure the military is supported.

Mr. HIGGINS. I don't know of any use. Any use of it would be legitimate because they are legitimate weapons, unless they are mis-used illegally. The weapon itself is a legal weapon. Whether there is a need for it or not——

Mr. SCHUMER. Well, it is only a legal weapon——

Mr. HIGGINS. Whether there is a need for it or not is not for ATF to decide, it is for Congress to decide.

Mr. SCHUMER. OK, we come to you for advice.

Mr. BROOKS. Mr. Schumer.

Mr. SCHUMER. Is my time up, Mr. Chairman?

Mr. BROOKS. It really is, honest. We have eight more people.

Mr. SCHUMER. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you, Mr. Schumer.

Mr. Coble, the gentleman from North Carolina.

Mr. COBLE. I thank the chairman, and I will be brief.

Judge Sessions my office received a call late morning by a caller who was watching the hearings during the time I questioned the Attorney General. The caller admonished me for having addressed her as Ms. Reno in lieu of Attorney General. I did that because I had been told she prefers Ms. Reno, so to avoid a subsequent hostile call, do you prefer Bill, William, Judge, or Director?

Mr. SESSIONS. However you would like it, Mr. Congressman.

Mr. COBLE. I will just call you Director, then.

Mr. SESSIONS. All right, thanks.

Mr. COBLE. I think I am the only member of this committee who asked the Attorney General this question, and I would like to ask you. Time and again she referred to the possible desirability of delaying the invasion or the raid to some future date. I asked her if anyone at any time had seriously considered conversely accelerating the date. It seems to me some merit may well have surrounded such a conclusion.

Mr. SESSIONS. There were a number of times when it seemed that we were on the verge of having them come out if Mr. Koresh kept his promise. The last of those, that was an extended period of time, was in connection with Passover, and his definition of Passover, but it was his assertion that after the Passover he would come out. Then it was only a matter of definition. But he did not.

But during that period of time we waited with the expectation that he would or with the hope that he would keep his promise and come out. We did nothing, as I recall, during that period other than maintain our pattern of conduct. I do not recall that we cleared out any further automobiles but Mr. Jamar could tell us about that. I think when we began that period, the last clean out had been done save except for the stretch of fence in front of the front door.

Mr. COBLE. Thank you, sir.

Director Higgins, I put this question to the Attorney General and she referred me to you, so I will submit it to you. Again, admitting that we today are applying 20/20 hindsight, not being critical of you in any way, sir, nor of your fine organization, but I am wondering if when the element of surprise appeared to have been com-

promised or as I said this morning perhaps emasculated, did you all consider aborting that raid or whatever it is called—let's call it a raid—and coming back another day?

I guess what I am saying, Director Higgins, is if I am going to surprise you, and it becomes apparent to me that you have become aware of that surprise, I am probably going to instinctively delay my surprise. Did you all consider doing that when it appeared that the surprise had been compromised?

Mr. HIGGINS. Congressman, without commenting, I guess—

Mr. COBLE. If you can answer that—you may not be able to.

Mr. HIGGINS. And I really can't. In the review by the Department, that will be a critical element. We will provide you with the answer as to what happened that day.

The reason I have not discussed it is we have not reviewed the operation and would not because the Department said they were going to review it.

Mr. COBLE. I fully understand that.

I thank you all for being with us, gentlemen, and I thank the chairman.

Mr. Chairman, I am yielding back my time before the red light illuminates.

Mr. BROOKS. Thank you very much.

Mr. Bryant, the gentleman from Texas.

Mr. BRYANT. Let me say that I do not want to second-guess the decisions you gentlemen made. I do not think you could have done a thing to save these people. They placed themselves in the grip of this guy and that is the way it worked out. I think it is real bad.

One thing I am curious about, though, who is doing this review? I am puzzled. Director Higgins keeps making reference to this review. Who is doing this review?

Mr. HIGGINS. The President directed the Justice and Treasury Departments to conduct a review of the activities, and so those Departments now are coming up—

Mr. BRYANT. So you are cooperating in this review?

Mr. HIGGINS. We will absolutely cooperate with them in terms of the review.

Mr. BRYANT. But you are not conducting the review?

Mr. HIGGINS. Absolutely not.

Mr. BRYANT. So why is there a prohibition in your answering these questions directly put to you?

Mr. HIGGINS. The reason I cannot answer some of the questions being asked is they call for conclusions on our actions that day. Under ordinary circumstances, I would review—

Mr. BRYANT. That does not call for a conclusion. Did somebody at the BATF notify the press in advance of the raid? Yes or no? It is a very simple question. Yes or no, did somebody at the BATF notify the press in advance of the raid?

Please do not repeat my question to me. Just answer the question.

Mr. HIGGINS. I am sorry, I didn't mean to. Yes, I think there is evidence which indicates that someone did.

Mr. BRYANT. Would that have been a violation of the rules?

Mr. HIGGINS. Violation of the rules, No. 1, if they had told them with specificity as to when it was going to occur. I have no evidence they told them any specifics as to when it was to occur.

Mr. BRYANT. It is within the rules to tell them if they do not tell them within specificity?

Mr. HIGGINS. I will provide you with a copy of our guidelines.

Mr. BRYANT. The simple question is: Is it within the rules of the BATF to tell the press in advance if they do not do so with specificity?

Mr. HIGGINS. In some situations. And I have to qualify it that way.

Mr. BRYANT. Is the purpose of that to reflect well on the BATF, or is there some public interest served by that?

Mr. HIGGINS. As a liaison function, in terms of liaison with the press, but not a public interest.

Mr. BRYANT. You heard Mr. Moorhead ask you about the report in the New York Times that indicated about 11 different news groups knew about this, and I believe it is the case that they—the press—were trailing you as you entered the compound; is that correct?

Mr. HIGGINS. I don't know that for a fact, that is why they were there. And that is part of the investigation, so——

Mr. BRYANT. Director Higgins, you know whether or not—when your agency entered that compound—whether they were being followed by news media. The answer is a yes or no answer. Were they being followed by members of the news media?

Mr. HIGGINS. There were news media there. You asked if there were 11. I understand there were news media there, which is a concern.

Mr. BRYANT. I am offering you a yes or no question and I want a yes or no answer. The news media were following your agents as they entered the compound.

Mr. HIGGINS. They got there after us. If that means they were following us——

Mr. BRYANT. They were there when you began the raid, isn't that correct, and you knew about it?

Mr. HIGGINS. Are you asking if I know whether the raid commanders knew who they were and what they were doing? I don't know the answer to that. They may well have suspected who they were. But that is what we are looking into during the review.

Mr. BRYANT. It totally lacks credibility that you do not know whether or not the directors of this raid, the commanders, or whatever phrase you use, knew whether or not the press were following them into that compound.

Now either they knew it or they did not know it. Which was it?

Mr. HIGGINS. I don't know whether they knew that or not, and that is an honest answer.

Mr. BRYANT. You have not asked anybody?

Mr. HIGGINS. I did not review this operation. We were asked specifically not to because we knew it would be——

Mr. BRYANT. Have you asked anybody in the BATF whether or not they knew anyone was following them when they began the raid? Yes or no.

Mr. HIGGINS. David may want to comment.

Mr. TROY. Can you ask that again? I didn't hear you.

Mr. BRYANT. This is about the fourth time I have asked this question. I am surprised you have not heard it already.

Did the director of this operation, did any of the people on the ground in this operation, know the press were following them as they began the raid on this compound?

Mr. TROY. To my knowledge, I don't know that any of the commanders of the raid had specific information that the press was following them as they entered the compound.

Mr. BRYANT. Have you asked them this question?

Mr. TROY. I have personally not asked them.

Mr. HIGGINS. No, I have not. I said that earlier.

Mr. BRYANT. That is a curious situation.

Let me ask this question. Who within your agency blamed the advanced notice of this on the Waco newspaper?

Mr. HIGGINS. I understand there has been a suit filed against them. Nobody in our agency that I know of, speaking personally, has blamed that newspaper or anyone else for doing it. That is under investigation. That is why I have not commented on it, but I am not blaming them.

Mr. BRYANT. None of your agents blamed the Waco newspaper for giving David Koresh advance notice?

Mr. HIGGINS. One obviously did because there has been a suit filed.

Mr. BRYANT. Who was that?

Mr. HIGGINS. Agent Risenhoover, I believe.

Mr. BRYANT. Was he wrong?

Mr. HIGGINS. I cannot comment on whether he is right or wrong.

Mr. BRYANT. Why can't you?

Mr. HIGGINS. It is under investigation.

Mr. BRYANT. You are a subject of the investigation, you are not conducting the investigation. I am asking you was he right or wrong when he said that?

Mr. HIGGINS. Again, I cannot comment on that. I cannot comment on whether he is right or wrong because, No. 1, I don't know how the operation was compromised.

Mr. BRYANT. Do you have any evidence the Waco newspaper tipped David Koresh in advance?

Mr. HIGGINS. Do I have any information personally?

Mr. BRYANT. Please do not repeat my questions to me. Do you have any information about whether or not the Waco newspaper tipped David Koresh in advance?

Mr. HIGGINS. I repeat your question only because it helps me understand, so I know.

Mr. BRYANT. It is a yes or no question, for the third time.

Mr. HIGGINS. It is not. It may be a yes or no answer to you, but to me it is a part, very directly a part of an ongoing investigation and I cannot answer it.

Mr. BRYANT. I am just asking you, do you have any information that makes you think the Waco paper tipped David Koresh in advance? Yes or no?

Mr. HIGGINS. Same answer.

Mr. BRYANT. What is the answer?

Mr. HIGGINS. My answer is I cannot comment on an ongoing investigation.

Mr. BRYANT. You are the subject of the investigation. You are not conducting the investigation. You are not a judge and you are not an investigator, you are an investgatee.

Mr. HIGGINS. Are you stating that if I say I know and somebody subpoenas me and asks how I know I wouldn't be part of the investigation?

Mr. BRYANT. You are part of the investigation. You are the subject of an investigation. You are the subject of a lot of scrutiny. You have no basis on which not to answer that question.

You owe the people of Waco an apology, and you owe the Waco newspaper an apology for letting this accusation stand. This is a very fine town. This situation happened 10 miles outside the city limits and one of the casualties of this debacle was the reputation of this fine city that had nothing to do with this. And, unfortunately, you added to their problems with one of your agents blaming their newspaper for causing the debacle in the first place. In my view, at least at this point, I have seen zero evidence that that is the case. And there is substantial evidence that your own people were at fault for tipping the press in advance.

Mr. HIGGINS. Let me comment on two things. One is the people in Waco treated everybody in law enforcement there outstandingly, and I have nothing but admiration for any of them. No. 2, ATF does not support the suit that was filed by the agent, period.

Mr. BRYANT. My time is up.

Mr. BROOKS. Thank you very much, Mr. Bryant.

Mr. Lamar Smith, the gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

Director Sessions, given that the results of the standoff were neither what we expected nor what we wanted, it seems to me there were still real heroes present at the scene. I am thinking particularly of the agents in the armored vehicles who at great danger to themselves left that protection of the armored vehicle, went in, and rescued at least two people we heard about this morning.

There were other agents within the confines of the compound who at great danger to themselves, and as we heard today, had thousands of rounds of, thousands of shots fired at them who continued to do the job that you asked them to do. I think they are the heroes of the hour and to your credit, they work for you.

Mr. SESSIONS. Thank you, sir.

Mr. SMITH. Let me ask you a question related to a question you had been asked earlier about the Hostage Rescue Team as to whether you think that a 50-person team is adequate for today's needs. You said earlier in response to another question that it was not. What would you consider to be the ideal type of personnel for a Hostage Rescue Team?

Mr. SESSIONS. The request that we have made over the years, where I have not been able to sustain it, have been for 24 agent positions consistently to take it up to the 74 mark. That would give us, obviously, a team and a half.

I asked Dick Rogers today during the recess about what that would have meant down there in Waco, and it would have meant he could have taken some out of the line and refreshed and regen-

erated them. If it had been double that amount, that is, if we had 50, if we actually doubled the size, he could take them one for one and move them in and out.

The critical point comes when the Hostage Rescue Team is dedicated to an operation, it cannot be used elsewhere. And we have suffered beginning back in November 1987 with both Atlanta and Oakdale prisons and riots being able to commit. This time, by the way, we did not know with the Lucasville, OH, prison riot, whether or not it would have been appropriate. I don't think it was. It was a State prison, it was not a Federal prison, but certainly that kind of expertise can be helpful with other law enforcement agencies.

So if you double the size, you would obviously have double the capabilities.

Mr. SMITH. Thank you, Director.

Mr. Clarke, a quick question for you. What evidence of child abuse have you heard about from individuals that left the compound that we need to hear today?

Mr. CLARKE. Congressman Smith, during the break, a gentleman that helped with facilitating the interviews and the maintenance of the children in the Waco area is present here today and had a conversation with some of us, and I think Mr. Ricks, who was handling that, might be in a position to fill us in on that.

Mr. SMITH. OK. Let me ask you to be very brief. I hate to—

Mr. RICKS. I think it is important, if you don't mind, because we have had a lot of statements with regard to abuse going on and one statement I think is very important to get on the record, and that was one of the children that was in the compound that was released early on was advised on Tuesday that his father was killed.

And he said a statement to the effect, "I don't care that my father is dead. I do not care David is dead because now there will be no more beatings."

There were also statements made by the children there in the compound that were released. They asked members of the Methodist home, "Did they have a beating room?" And they asked them, "What was that?" And they said, "When we received really bad beatings where we were going to cry real loud, we were taken to the beating room so people would not hear us." So I think those are very important to put on the record today.

Mr. SMITH. That is very important and thank you for calling that to our attention.

To your knowledge—and I am asking this of anyone at the witness table today—to your knowledge, has President Clinton received a briefing by anyone who was physically present at the compound on April 19 and witnessed the fire, witnessed the tragedy that occurred?

And if so, from whom did he receive such a briefing?

Mr. SESSIONS. I do not know of President Clinton having received a briefing, certainly not from myself nor anybody else in the FBI that I know of. I will ask the question here generally if anybody knows of such a briefing.

Mr. JAMAR. I am certain there has not been a briefing from anyone from the FBI who was in Waco.

Mr. SMITH. I have to admit that I am curious about the pattern I see here. Earlier today, it was revealed that President Clinton did

not talk to Attorney General Reno until 12 hours after the fire. Now we hear that 9 days after the fire the President still has not received a personal briefing by someone who was a firsthand witness and active participant and perhaps in charge of some of those days' activities.

Quite frankly, I have to say I do not think these are the actions of a hands-on President. Mr. Chairman, I would yield back the balance of my time.

Mr. BROOKS. Thank you very much.

Mr. Bob Scott, the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

Director Higgins, I had some questions about the notification of the media too, and since most of them have been asked, we won't go over that again.

Mr. HIGGINS. Thank you.

Mr. SCOTT. But as I expressed to the Attorney General, I have some concerns about some of the arrests that have been made. It appears that the method of arrest is either to publicize or get media attention or to inflict embarrassment as a punishment during the arrest process.

Having said that, you have said that you—in other arrests, have you notified the media so that they will be there to publicize the event?

Mr. HIGGINS. There have been arrests where we have notified the media, and for a number of reasons. For example, where the media is investigating the same thing that we are investigating, it may become necessary to discuss arrests with them because they are getting ready to do something that might compromise our investigation. So there are notifications of that kind.

Our media policy is very specific. We will not notify or bring the press along in a situation where we get a request unless it is cleared with the Justice Department and we follow the Justice Department guidelines.

So what ATF does, I suspect is not much different than other agencies but they can comment.

Mr. SCOTT. So no ATF agent should have thought that it was policy or practice or preferred that they contact the media?

Mr. HIGGINS. I think in a situation where we have a group like this, that any kind of notification which would have in any way identified the group would not have been appropriate.

Mr. SCOTT. And there is no way they should have thought it was appropriate or desired?

Mr. HIGGINS. I am not going to prejudge what they did.

Mr. SCOTT. Can you compare the training of the ATF agents for situations like this, to the training of the FBI?

Mr. HIGGINS. I would have David do that because he is intimately involved with that.

Mr. TROY. The special response teams that conducted the raid on the 28th of February are very similar to the FBI's SWAT teams, or the SWAT teams in many local, State police agencies. Our special response teams go through a 2-week specialized training course on high-risk entries and situations where you have violent criminals that are usually armed.

Mr. SCOTT. Do you know how that compares to the FBI?

Mr. TROY. No, I don't specifically, but we do send our agents through that training. We also have them go through retraining every month as a team, and of course they are utilized in live situations on a recurring basis. It is an ongoing training process which ensures very highly trained people, with special skills on high-risk entries and handling dangerous offenders.

Mr. SCOTT. We have had questions that have been or suggestions that the arrest situations ought to be done by the FBI. Do you have any comment on that?

Mr. HIGGINS. Let me comment that we arrest thousands of people a year and our people are well trained. In the situation in Waco, we had highly trained people, highly motivated who performed bravely that day under extreme pressure.

The problem is that when you run into an ambush situation, it probably would not have mattered whether we had double the number of people or any other equipment. We simply would have lost more people. Because no one trains to be able to confront an ambush.

Mr. SCOTT. You were, obviously, outgunned. And in Judge Sessions testimony, he indicated he had called you that day to offer support. Had you intended to seek backup support sometime?

Mr. HIGGINS. Yes, and what he may not even know is that by the time he had called me, our Associate Director for Law Enforcement, probably had already called Mr. Potts on his staff asking for that specialized support that the HRT had. So by the time Director Sessions called me, our groups worked so closely together, that had already been done. So we do have a good relationship.

Mr. SCOTT. And one final question. It is my understanding of your response to another question that you can buy, sell and ship these kits to convert legal semiautomatic weapons to machineguns?

Mr. HIGGINS. There are many types of kits you can buy.

Mr. SCOTT. Are they generally advertised so people would know where to get them?

Mr. HIGGINS. There are a number of trade magazines, yes.

Mr. SCOTT. Director Sessions.

Mr. SESSIONS. Yes.

Mr. SCOTT. I kind of obliquely referred to a Washington Times article when I was asking questions of the Attorney General about the chemicals the FBI used being banned for war. We have made a couple of calls, and I think it is fair to say that the accuracy of the article is somewhat, in my mind, in question.

Basically, it says the powerful chemical weapon the FBI used to break the siege at the Branch Davidian compound has been banned by military use and may have turned the last hours, so on, and so forth—can you definitively say the article is inaccurate?

Mr. SESSIONS. The article does not indicate that law enforcement is an exception in the use of CS tear gas. Beyond that, it may be that Mr. Potts can talk about it definitively.

Mr. POTTS. Sir, I can say that the article is very inaccurate. As a matter of fact, it is extremely misleading. We had a press conference or press briefing after this article appeared, with all the other press releases, and it became a nonstory because we got the truth out about this gas.

There is a convention that was written in Paris where they propose that all chemical weapons, to include riot control agents, be banned. It is still in our military supply, it has not, this treaty has not been approved.

Mr. SCOTT. I think it is fair to say the article is inaccurate.

Mr. POTTS. It is. Very.

Mr. SCOTT. Let me sneak in another question, because the chairman is looking at me. Can you discuss briefly why CS was selected rather than CM or some other tear gas?

Mr. POTTS. Because it is the safest, sir. It is the safest to be used. It is only an irritant.

It is the one that would provide the least amount of harm to anyone in there. Nontoxic, nonlethal, nonflammable.

Mr. SCOTT. Thank you.

Mr. BROOKS. Thank you, Mr. Scott.

Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Judge Sessions, I want to direct a couple of questions to you, please, sir.

First of all, let me say I have the ultimate respect and I am a strong supporter of law enforcement, generally, and certainly the FBI, specifically.

Mr. SESSIONS. Thank you.

Mr. RAMSTAD. I have heard the testimony this morning, which was corroborated by you, and initiated by the Attorney General, that the two main reasons you made the move on April 19 with the tanks and the gas, were the fatigue of the Hostage Rescue Team and the allegations of child abuse.

Were there any other variables, Judge Sessions, that entered into your decision?

Mr. SESSIONS. Yes, there was the safety of the community, the deteriorating situation inside, the circumstance with the health facilities inside, the circumstances with the children being in that mix. All those were factors that were discussed and all of them played a role in the decision. But it was part of a continuum to tighten down the perimeter and actually to make it possible to bring those people out.

Mr. RAMSTAD. Well, the reason I raise the question, both you and the Attorney General testified you knew about the child abuse allegations prior to February 28, the first raid; is that correct?

Mr. SESSIONS. I didn't know about them prior to the 28th. I knew about them during the course of the siege, yes. I became aware of the fact that there were allegations prior to the 28th.

I didn't know about them before the 28th. I had no touch with it at all. I personally do, now. That is my understanding, that there may have been some earlier discussion with Congressman Edwards, that Mr. Jamar referred to earlier, but I had no knowledge of that.

Mr. RAMSTAD. Because what I am trying to do is, I have a transcript of an article from the Houston Chronicle, dated March 10, in which FBI officials are quoted as saying they are prepared to wait indefinitely for a peaceful resolution. The term "infinite patience" was used throughout this article as a direct quote.

So, in other words, all of these factors entered in? It wasn't simply the child abuse allegations and the fatigue of the rescue team? I want to figure out what precipitated the change in thinking from one of infinite patience and waiting indefinitely for a peaceful resolution, as FBI officials are quoted on March 10. What was the main precipitating factor?

Mr. SESSIONS. March 10 and April 19 are 39 days apart. I think we did exercise infinite patience and it was all a continuation of a negotiation, and bringing to meaningful negotiation and making it possible. So the fact there were 39 days later after, whatever that article quoted, we moved the perimeter yet tighter and began to take away part of that building from them and began to insert the tear gas, was part of trying to have meaningful negotiations, making it possible for them to come out safely and save—and safely.

Larry, do you want to comment?

Mr. POTTS. Sir, can I add one small thing here?

One thing with regard to the fatigue of the Hostage Rescue Team, I wish I could say I was in the kind of shape ever that these guys are in—both from the ability to handle stress and the physical capability that these people have.

They were not fatigued, they were ready to go and able to go, and performed incredibly in an incredible fashion. There was a huge concern that we have the best hostage, the best Hostage Rescue Team in the country tied up on a perimeter where they are in great harm's way. We have come to a point where negotiations are going nowhere at all.

On March 10, we were still very hopeful about negotiations.

The negotiations had, for all intents and purposes, stopped, and we were talking to experts who are saying this guy has no intention of coming out. So it was the completion of our plan where we had been decreasing the size and increasing the pressure, and that is what it was all about.

It was not—we had an urgent feel and need to do something for those kids on the first day, just like ATF said. We were very concerned about the safety of the kids from day one, all the way through.

Mr. RAMSTAD. And I am glad that that was a very dominant concern on your part, which it obviously was, and of course hindsight is always 20/20 and we can sit here today and retrospectively judge this situation.

I have been convinced that this was a decision made on sound law enforcement principles and not because there was some pressure from anyone above your chain of command to end the standoff for other reasons. Is that a fair statement?

Mr. POTTS. Certainly is.

Mr. SESSIONS. The other thing I think was very interesting, you used the dates of March 10, and Mr. Clarke was telling me about the letters that were received from Mr. Koresh on the 10th and 11th, and he may want to comment on that.

Mr. CLARKE. The other major concern that we had is that all through these negotiations, we were getting feedback from him, David Koresh, and on the 9th and 10th, he sent out two letters, and I assume that they have been made available here, and the

analysis of those letters very clearly indicated that he had his own game plan. His clock was running. He very well could institute his action any time that he so chose, and in his writings he talked about luring us into his snare, that his snare had been set.

So it was our concern also that he would initiate something that we would have to react to.

Mr. RAMSTAD. I see my time is up, but I want to make one final point, Mr. Chairman.

I think certainly the hearings today have brought up the very significant point that the Congress has to get behind law enforcement and provide you with the resources necessary in a situation like this as well as other situations that you face every day.

And with that, I will yield back.

Mr. SESSIONS. Thank you, sir.

Mr. BROOKS. Thank you very much.

Mr. Mel Watt, the gentleman from North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

I guess one advantage over going near the end of the process is that you get a chance to hear what everybody else has asked and hopefully benefit from that.

There is one thing that keeps hitting me in the face, though, and that is, I take it that Koresh was the undisputed leader here. Is there any indication that there was anybody else in that compound who had the kind of mind control and absolute power and feeling that he was God who could have led these folks other than Koresh?

Mr. SESSIONS. My answer to that would be there was none that even approached him, but there may be other opinions. I think he was undeniably, absolutely the leader and controlled everything.

Mr. WATT. And if that is then the case, had he been arrested very early on and had the leaks not taken place about his, the original warrant and the original arrest, could he have been taken outside the compound?

Mr. SESSIONS. I would have to defer to ATF Director Higgins on that question.

Mr. HIGGINS. As I think I told Congresswoman Schroeder, we considered the option of trying to do that. The information we had at the time we had the warrants was he was so concerned that he was not going to be leaving the compound in the future, that the only approach was to arrest him there.

Mr. WATT. I thought I heard you say that he became concerned when he learned from some source that you all were contemplating making an arrest. When was the last time your agency saw him outside the compound and what was the status of your investigation at that time?

Mr. HIGGINS. I guess the difficulty in looking at the one conversation as part of the affidavit is—and that is why we have asked for a complete review—we had, on a number of occasions, not just in the affidavit, gotten statements from him and from others that he always felt—or not always, but he felt for a considerable period of time that at some point ATF would come to arrest him.

He told one person, for example, that we were so arrogant that we were doing SWAT team training near the compound back in March 1992 preparatory to serving a warrant at his premises.

Actually, it was a local team that was practicing. Completely unrelated. But I use the word paranoid. He was paranoid that at some point the ATF was going to arrest him.

I don't know the answer to when was the last time someone in ATF saw him off the compound. I will provide that to you.

[The information follows:]

ATF has never documented Vernon Howell as having been seen off the compound by ATF. We have never been made privy to the leak investigation; therefore, we are unable to state what it includes.

Mr. WATT. I would be interested in knowing that because it sounds to me like this whole episode could have been avoided had an original leak not taken place that was even more serious than the leak which occurred around your raid of this compound.

Is the scope of the investigation which is taking place about the leaks broad enough to go back and cover leaks earlier than that?

Mr. HIGGINS. The scope of this investigation is in terms of how they had advance notice that we were coming and that is what is being looked at. I am not sure you are talking about an earlier leak; you might want to help me on that. I am not sure what the earlier leak was you have reference to.

Mr. WATT. Well, if at some point Mr. Koresh was coming and going freely from this compound and he received word or the leak went out that at some point you all were going to come and get him, and he then changed his course of conduct and stopped coming and going freely from the compound, then it would not be the second leak that created this entire situation, it would be the first leak.

And the question I am asking you is: Is the scope of the inquiry which is taking place broad enough to cover the potential or the possibility of a first leak?

Mr. HIGGINS. I see the assumption you have made that there was a first leak which created his not wanting to leave the compound. I don't know that that is what motivated him into not wanting to leave the compound, so I think maybe your first assumption, unless you have more information than I have, may well not be the case.

We can provide you with the information we had as to why our intelligence was such he would not be leaving, but I don't believe it relates to a leak. I don't have any information to that.

Mr. WATT. Could you also provide me information about when your agency first had knowledge about the child abuse?

Mr. HIGGINS. Sure.

[The information follows:]

On February 17, 1993, Special Agent (S/A) Robert Rodriguez met with Vernon Howell at the Branch Davidian compound. During that undercover contact, Howell told S/A Rodriguez that he (Howell) was not well liked, and for that reason he had maintained a low profile for the last 2 years. Howell further stated that he did not leave the compound very often because he was keeping a low profile. Additionally, the surveillance of the compound, which began in earnest on January 11, 1993, never detected Howell leaving the curtilage.

The ATF Special Agent assigned to the case was told by Joyce Sparks, Texas Department of Human Services, on July 21, 1992, that information has been received that child abuse was occurring at the Branch Davidian compound.

Mr. WATT. And when your agency first had knowledge about the accumulation of weapons which were illegal and how much of an

expiration of time there was between that first knowledge and the last time he was seen outside this compound?

Mr. HIGGINS. We certainly will.

Mr. WATT. Thank you, sir.

[The information follows:]

ATF first received information regarding Howell's accumulation of illegal weapons on June 4, 1992. ATF has never observed Howell off the curtilage of the Branch Davidian compound.

Mr. WATT. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Watt. The gentleman from New Mexico, Mr. Steve Schiff, distinguished member of this committee.

Mr. SCHIFF. Thank you for recognizing me, Mr. Chairman.

Gentlemen, I have two issues that I would like to ask about and I think these are properly directed to Mr. Higgins, at least first.

The first of the two issues is the question has come up in this committee, and it has come up at other times and places about the advisability of having what is a sophisticated law enforcement agency, which is Alcohol, Tobacco and Firearms. It is very professional, no criticism of the agency here, but it is outside of the Justice Department where most of the other similar types of agencies operate. Do you feel that causes any kind of difficulties—the fact that the FBI, as one example, is under Justice and you are not?

Mr. HIGGINS. You probably asked the least impartial person here to answer that question, but as a matter of fact I think whether in the same department or not, we work closely together, as happened during this case. Maybe 1 percent of the time we don't work closely together, and that is what makes the headlines. So I think there is a perception that the relationships are not as good as they are.

I am probably not the best person to ask, if it makes sense to put ATF in the Justice Department or put the FBI in ATF, but certainly we would be happy to look at that.

Mr. SCHIFF. If I can continue. When Attorney General Reno was testifying, she analogized her position in the Justice Department chain of command as similar to General Marshall during World War II. And who would be General Marshall over ATF? Does ATF, I guess it would be the Secretary of the Treasury.

Mr. HIGGINS. Secretary of the Treasury, and below him with respect to—and there are thousands of law enforcement officers in the Treasury Department—direct responsibility for the Bureau, whether Secret Service, Customs, ATF, IRS, all those that have agents, would be under the Assistant Secretary for Enforcement.

Mr. SCHIFF. Well, was Senator Bentsen confirmed as Secretary Bentsen at the time of the initial attempt to make these arrests?

Mr. HIGGINS. Yes.

Mr. SCHIFF. Did you or anyone from ATF discuss this matter with him prior to those events? With Secretary Bentsen, I mean.

Mr. HIGGINS. I did not, and I am sure that is true of ATF. My discussions were with the Acting Assistant Secretary for Enforcement.

Mr. SCHIFF. Let me go to the second area. The second area deals with firearms and we are going to hear more about that. Have you

been able to confirm that any semiautomatic weapons were illegally converted to fully automatic weapons within that compound?

Mr. HIGGINS. I will have to take a pass on that. The search warrant has not been returned yet and the evidence at the scene is still being worked. When that is returned, I think it will be clear in terms of what was there, but I cannot comment in terms of specificity.

Mr. SCHIFF. Can you answer then generally, how difficult is it to convert a semiautomatic and legal weapon to a fully automatic and illegal weapon?

Mr. HIGGINS. Not terribly difficult, given the proper material and tools. I could not do it personally, but I am sure with some time either one of us could easily.

Mr. SCHIFF. Mr. Chairman, thank you for recognizing me. I will yield back at this time.

Mr. BROOKS. Mr. Canady, the gentleman from Florida.

Mr. CANADY. Thank you, Mr. Chairman. I would like to follow up on some of the questions about the media policy of the AFT very briefly. I don't want to replot any ground there, but it wasn't clear to me, although I would assume that there is a written media policy.

Mr. HIGGINS. There is a written media policy and I think Congressman Hyde asked for a copy and we will provide a copy to the committee.

Mr. CANADY. I wanted to make sure if it had not been asked for that we would receive that.

I want to similarly ask for a copy of any written media policy that the FBI might have. I think that would be helpful, Director Sessions.

Mr. SESSIONS. I would be pleased to supply that.

Mr. CANADY. Thank you very much.

I would also like to follow up on an issue that was raised earlier about the timing of when you at ATF, Director Higgins, obtained probable cause to arrest Koresh. If I understood your testimony earlier, you indicated that it was not too long before the warrant was actually obtained.

I will tell you, quite frankly, that is at variance with information we were provided in a briefing by persons from your Department. It was my understanding, based on that information, that you had probable cause to arrest him in October.

Would you like to address that?

Mr. HIGGINS. I am not sure of what was said to you in the briefing, but we had a briefing at headquarters, and I believe it was in December, with respect to the probable cause that had been gathered to that point.

It was the decision of our Associate Director reviewing this, and that is who I got my information from, that he was not convinced we had probable cause to do that and asked we get more information. It went back out and we didn't get it until February.

So that is my best information from the person that was part of the information process. If we misled you in our briefings as to other than that, it was unintentional.

Mr. CANADY. So you feel quite confident there was not probable cause to arrest him any time prior to December?

Mr. HIGGINS. David may want to expand on that.

Mr. CANADY. Mr. Troy.

Mr. HIGGINS. We have informed the committee on that once today.

Mr. CANADY. If Mr. Troy wants to address that, and it is certainly related to Mr. Watt's questions, and we need to make sure we are getting the straight story on that.

Mr. TROY. When you actually have probable cause to effect an arrest can vary greatly in any investigation, and of course we were working with the U.S. attorney's office to get probable cause that was satisfactory to them. We were also developing probable cause satisfactory to our own leadership within ATF.

In addition to that, we had a tactical plan that had to be developed to execute the arrest and search warrants which we had not yet done.

When you put those three together, it is very difficult to pin an exact date and say on this date we had probable cause. We can do that, but we may not have had the other issues in line to actually go forward.

Mr. CANADY. I understand that even though you had probable cause to obtain a warrant, you might not have had a plan together for storming the compound. I understand that issue.

But what I was trying to get to, and which I think is important, is, when you actually had what you needed to get a warrant to arrest him—because that I think is certainly related to whether some attempt should have been made at an earlier point when he was leaving the compound to actually remove him as the leader of that group. Maybe we would have seen a little different scenario following that.

I don't know that it might have turned out the same way. I think that is an issue we have to look at.

Mr. HIGGINS. The best information I had, that was given to me this morning, is that we didn't have it until mid-February, but I will get you the specifics.

Mr. CANADY. I appreciate that very much.

[The information follows:]

ATF first received information regarding Howell's activities on June 4, 1992, from Lt. Gene Barber, deputy sheriff, McLennan County, Texas. The original information received from Lt. Barber was eventually corroborated during June, July, and August 1992. Additional information was developed through interviews with prior members of the Branch Davidian cult and others who had been inside the compound. During this period when probable cause was being fully established the ATF S/A assigned the Vernon Howell investigation stayed in contact with the Assistant U.S. Attorney. As early as the latter part of November 1992, he was told by the Assistant U.S. Attorney that it appeared there was enough probable cause for a historical search warrant. However, ATF did not feel it had enough information to formulate a tactical plan and continued to pursue the investigation. One of the last pieces of information that supported probable cause was obtained on January 25, 1993, during an interview with former cult member David Block in Los Angeles, California. This information dealt with Block's conversations with cult member Donald Bunds, during which Bunds showed him computer drawings of plans for a machinegun and told him of Howell's request for Bunds to help in the manufacture of such weapons.

Mr. CANADY. Let me ask you something else now, Director Higgins. Do you know if there was a listening device placed in the compound prior to February 28 or if any attempt was made to place a listening device in the compound?

Mr. HIGGINS. No, there was not.

Mr. CANADY. Do you believe that the placement of a listening device in the compound might have helped facilitate the planning of the raid and the actual execution of the raid?

Mr. HIGGINS. It might have helped that, but it would have been contrary to the laws of the United States. To plant a listening device, we have to be able to show we cannot gather information in any other fashion and that the listening device is being used to do that.

We were able to gather probable cause following other law enforcement practices. So while I am not an attorney, my understanding is that we could not have used that device given the fact that——

Mr. CANADY. Let me ask you if it had been legal, would it have been helpful?

Mr. HIGGINS. It would have been helpful, especially on the day of the raid if the words, "they are coming, they are coming, and we know they were armed."

Mr. CANADY. OK. Thank you very much. Quickly I have one more question. How many and what governmental agencies were involved in the February 28 raid? I want to know who was involved in any way.

Mr. HIGGINS. We had—in addition to the ATF agents, we had representatives from the Immigration and Naturalization Service. I think there was one agent from the Drug Enforcement Agency. There were officials from the various, from the sheriff's department. I am not sure about Waco.

Mr. CANADY. What about the National Guard?

Mr. HIGGINS. The National Guard.

Mr. CANADY. Let me specifically ask you, when were officials of the National Guard informed about the impending raid and asked to participate?

Mr. HIGGINS. Dave may know the answer. I don't know the date.

Mr. TROY. I don't know the specific date. They were obviously contacted and made part of the raid plan but we would have to get the actual date for you.

Mr. CANADY. If you could provide that to us, I would appreciate it, and also detail their exact role and how many people they had involved in the operation.

Mr. HIGGINS. Absolutely.

Mr. CANADY. Thank you, Mr. Chairman.

[The information follows:]

On February 2, 1993, William R. Enney, Interagency Coordinator, Counterdrug Support, Texas National Guard, was officially notified and briefed on support needs for the upcoming raid.

Mr. BROOKS. Thank you very much.

Mr. Goodlatte, the gentleman from Virginia, is recognized.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Gentlemen, I want to thank you for appearing today and also for the briefings that various of your deputies presented. You have been cooperative and helpful, and this is a difficult situation.

I do think that while the blame here clearly rests with Mr. Koresh, the response did encounter a number of problems. I am concerned about the communication between your agencies. And a

matter has been called to my attention that I would like to ask you about.

I have a Newsweek magazine article of March 22 that alleges that the Clinton-Gore campaign bus with Presidential Candidate Bill Clinton and Vice Presidential Candidate Al Gore, passed within shooting range of this compound last August 28.

Are you familiar with that, Director Higgins?

Mr. HIGGINS. I think I saw the same article as you. I don't know any facts about that. I could not say it is true or not true.

Mr. GOODLATTE. According to this, then Presidential Candidate Clinton was on his way to the Texas Utilities Trading House Creek Plant, which is apparently a powerplant that is 1½ miles from the compound. At that time your agency, Mr. Higgins, was conducting an investigation and you were aware of the fact there was a substantial amount of weapons stockpiled there.

Mr. HIGGINS. I am not sure on the date you mentioned how much information we had. I am not that familiar with the affidavit, as to when we got the information we got. I can provide that. I don't know the answer to that.

[The information follows:]

During June, July, and August 1992, ATF confirmed that a large number of firearms were being stockpiled at the Branch Davidian compound. The United States Secret Service was also made aware of this information in advance of Presidential Candidate Clinton's visit to the Waco area.

Mr. GOODLATTE. My understanding is from Mr. Troy's discussions with our committee, there was an investigation going on well before that time.

Mr. TROY. Our investigation, as we mentioned to you, started in June 1992.

I think you were referencing August; is that correct, sir?

Mr. GOODLATTE. Right, right.

Mr. TROY. I don't know of any information that we were provided in Waco, the investigative team, referencing Presidential Candidate Clinton being in the area. We are not disputing he may have been.

Mr. GOODLATTE. This is what gives rise to the question about communications between your agencies and the Secret Service. Because, according to this report, neither the FBI nor the Secret Service had any knowledge of that fact and the candidate was permitted to give an outdoor speech 1½ miles across open pasture land. And we have heard the testimony about the range of the .50-caliber rifle that had a range of 3,000 meters, which is more than 1½ miles, at a time when this investigation was going on.

Director Sessions, are you familiar with this? Are you aware of the fact that this may have taken place and your agency was not advised?

Mr. SESSIONS. I would only know in connection with the Secret Service, that we provide to them intelligence that we have in connection with their responsibility, which is the protection requirement, and that we would have provided anything we had.

I do not know of anything specific. That would have been in the Western District of Texas, Mr. Jamar may have some information. I have none.

Mr. Potts may have some. I had none.

Mr. GOODLATTE. Are either of you gentlemen familiar with this?

Mr. JAMAR. No information at all about that.

Mr. POTTS. No.

Mr. GOODLATTE. Well, what is your policy? Do you get contacted by Secret Service on a regular basis, or how would this type of thing happen without their knowing about this?

Mr. HIGGINS. We would be routinely contacted. I don't know that it happened, that is why I am having difficulty in answering the question. I don't know what information we would have had at that time, that we could have presented to them, but as a routine matter, we work closely with the Secret Service. In the same Department, actually.

Mr. GOODLATTE. OK. I would like to ask, Director Sessions, if you have any comments on what I perceive to be a difficulty in having to suddenly pick up in the middle of a crisis like this and take over from another agency. That is when your agents are not as well briefed on the background of Mr. Koresh and his activities, and so on, as another agency, and whether you think that there ought to be a reorganization that would facilitate these types of operations?

Mr. SESSIONS. I would defer to the Attorney General on the latter part of the question.

On the first part of the question, we are accustomed to moving in with the Hostage Rescue Team in exactly those kinds of circumstances, where there are very difficult existing circumstances. Where you take any one of the Hostage Rescue Team operations, they are accustomed to moving into that type of operation and then setting up with all of their own command and control, with all their support mechanisms. So they are a self-contained, able operation from the moment they hit the ground.

So it is an operation that is designed for difficult circumstances and they are prepared to deal with it. The ASAC, who is in charge of the Hostage Rescue Team, is here. Mr. Rogers is here and could brief more fully on that, if you would like, sir.

Mr. GOODLATTE. I also want to ask each of you if you would look into the matter I raised regarding the Secret Service and report back to the committee. Let us know whether, in fact, you can verify that this report is correct, and that the Presidential candidate may have been this close to a dangerous situation, without two law enforcement agencies, three law enforcement agencies knowing about that dangerous situation?

[Information provided by BATF follows:]

Yes. The United States Secret Service has confirmed that Presidential Candidate Clinton did visit the Waco area on August 28, 1992.

Mr. GOODLATTE. I am also concerned about your policies regarding notifying the media, and I hope that each of you will review those policies.

I am not making any allegations about any particular media organization. In fact, a number have been mentioned as being possible inadvertent sources of the information. But it is definitely clear that Mr. Koresh knew you were coming and you lost that 1 minute of surprise that you needed. And, in fact, in exchange for that, there are 40 or more people firing automatic weapons, perhaps as many as 10,000 rounds, and we cannot expose our agents to that kind of situation under any kind of circumstances.

Mr. BROOKS. Thank you very much, Mr. Goodlatte.

The drama of the Branch Davidian standoff and its fiery end is only exceeded by the lessons to be learned from the experience by our law enforcement agencies, Congress, and most important, the American people.

There is still much evidence that needs to be gathered and analyzed to facilitate firm conclusions about the events in Waco. Yet, the preliminary findings seem to show a responsive, resourceful team of Federal enforcement agents valiantly, patiently trying to save lives. That so many innocent victims lost their lives despite these well-intentioned efforts has understandably led to the scrutiny undertaken by this committee today.

Yet, the temptation to second-guess, to rescript the Waco scenario and replay all the conceivable mistakes in operation must be resisted until the necessary scientific and legal analysis have been completed. Even after scientific and legal verdicts are in, we may still never realize or understand how one single individual was able to impose his bizarre and destructive views on the innocent unsuspecting group of people, to the point of sacrificing their lives in pursuit of his mad visions.

Even so, this committee will diligently follow the progress of the executive branch investigation, take whatever steps it deems necessary, and bring all the facts to light to the American public as expeditiously as possible.

Before the meeting is adjourned, I want to thank all of you for being here today. It has been a long day. I think it has been productive, and I am grateful to you for your contribution.

Mr. SESSIONS. Thank you, Mr. Chairman.

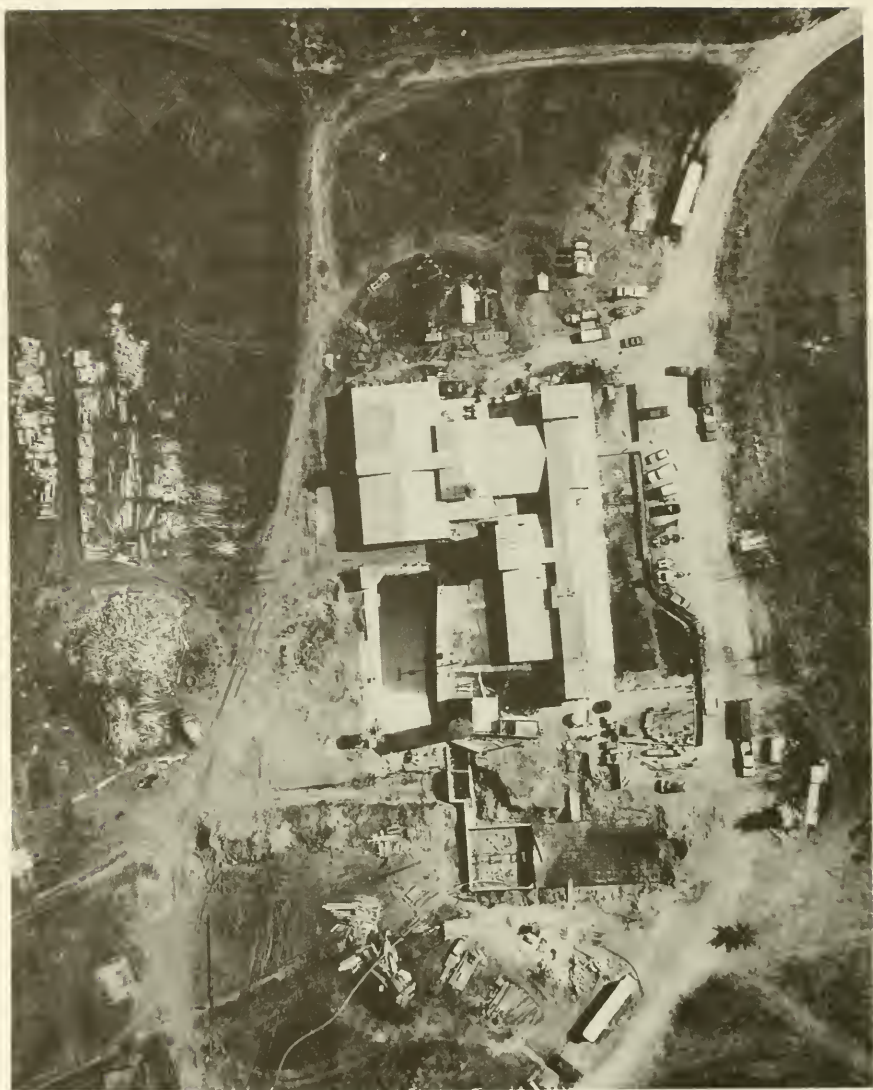
Mr. BROOKS. The committee is adjourned.

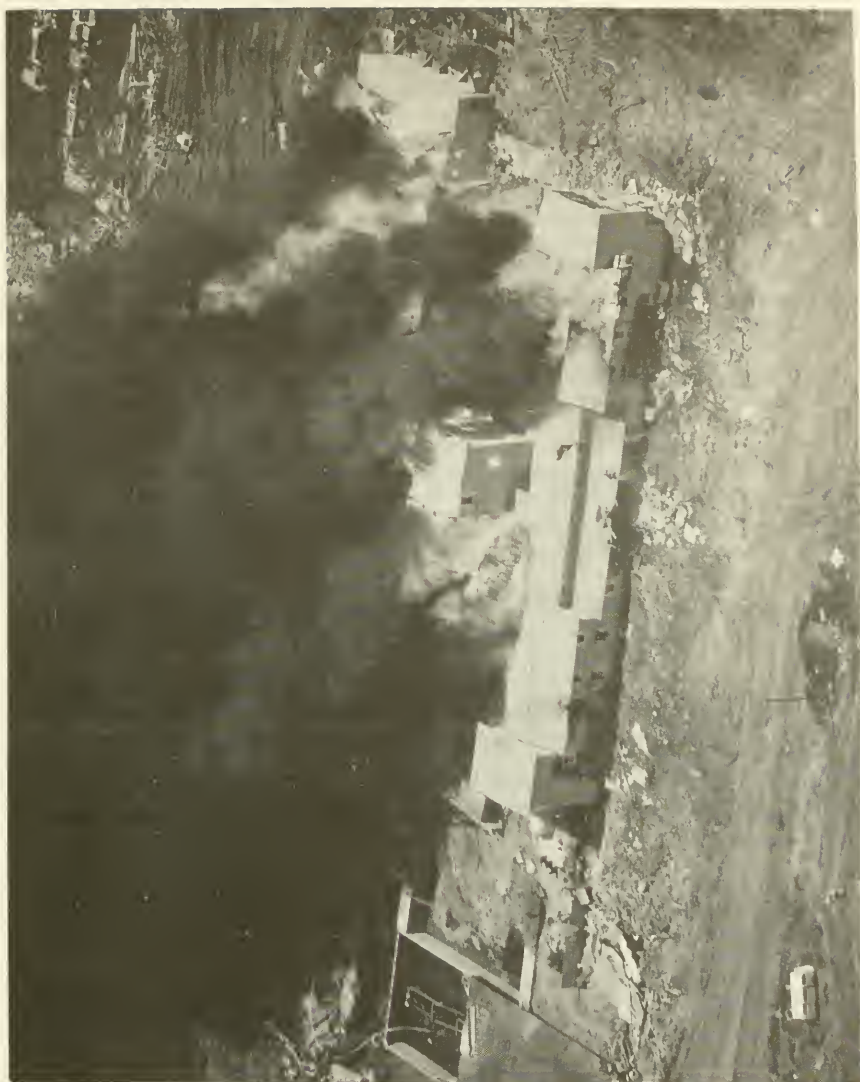
[Whereupon, at 6:50 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—FBI PHOTOGRAPHS OF THE BRANCH DAVIDIAN COMPOUND







APPENDIX 2.—RESPONSE TO QUESTIONS FOR THE RECORD

RESPONSES TO QUESTIONS TO ATTORNEY GENERAL JANET RENO
FOR THE RECORD SUBMITTED BY REPUBLICAN MEMBERS
HOUSE COMMITTEE ON THE JUDICIARY

1. During the 52-day standoff, in an attempt to engage in "psychological warfare" the FBI began playing loud music over loudspeakers. Press reports indicate that shortly thereafter, Mr. Koresh became "more irritable and prone to angry outbursts." Later reports indicate that tapes were played of Buddhist chants, rabbits dying, babies crying, whistling and music. Individuals who left the compound have indicated that, rather than breaking people down, the "psychological warfare" had the effect of contributing to the cohesiveness of the group.
 - Who recommended that this "noise strategy" be used?
 - What has been the prior experience with the FBI or other law enforcement agencies with the outcome of this type of noise strategy?
 - Did you specifically consider the adverse impact this might have on the children inside the compound?
 - A. The FBI controlled the negotiations and strategies that were to be used during the standoff. I did not have advance knowledge of these strategies. I relied on the knowledge and expertise of the FBI on these issues.
2. Did the FBI wait too long? Should they have moved in earlier -- in a complete surprise mode?
 - A. We will never know if this standoff might have ended differently if the FBI had moved sooner in a complete surprise mode.

3. Attorney General Reno, in your press conference the afternoon of April 19, 1993, you stated that "we considered every possible potential and every possible option." Could you discuss in detail the potential options presented by the FBI and explain why they were not selected?

A. I discussed the options in my testimony but to summarize: Among the options were to permit the standoff to continue; to conduct an armed assault; and to use tear gas to force the Branch Davidians to either continue to negotiate or come out of the compound. We knew that the law enforcement agents could storm the compound and eventually overcome those inside. But we immediately rejected the option of a direct assault because of the substantial risk it posed to loss of life of agents, of children and others inside the compound, and potentially of innocent bystanders. We were aware that the Davidians had a 50-caliber rifle that had an effective range of 3,000 yards, and that posed a risk to neighbors in the area.

I asked whether it would be possible to construct a barricade, or perimeter, outside the compound, so that we could reduce our law enforcement presence at the scene but still prevent Koresh and his followers from simply escaping. I was told that a perimeter of concertina wire was already almost fully in place, but that it could be breached.

Of course, we considered waiting. I continually posed the question: "Why now?" I wanted to know if there was any likelihood that they would run out of food or water and be forced to surrender, but we determined that they had supplies that might last a year or more. We considered whether there was a way to disable their water tank, but concluded that there was no way to do that safely. Permitting the standoff to continue was not viable because it had not led to a peaceful surrender in well over a month; negotiations were at an impasse and seemed fruitless; the security of the perimeter fence could not be maintained indefinitely; and, if the standoff continued, the hostage rescue team would require a period for rest and retraining.

One option I rejected was withdrawing our law enforcement presence. Koresh and his followers had killed four ATF agents and wounded fifteen others. We had a responsibility to maintain a law enforcement presence until we could arrest them and bring them to justice.

4. What exactly did you tell the President when you briefed him on the plan to send in tanks to break down the walls and insert tear gas into the compound?

A. I informed the President that I had decided to approve the FBI's request to use tear gas which would be inserted from a boom on the CEVs. I informed him generally what the options were. I told him I had carefully studied it and reviewed this plan in detail and felt it was the best way to proceed.

5. Was there a more potent form of tear gas that the FBI wanted to use, which was rejected due to fear of potential health effects on the children and the elderly? Was there a less potent option that could have worked?

-- Was the propellant used with the CS powder flammable?

-- Is CS gas recommended for use inside buildings?

-- We have heard conflicting information on CS gas and whether its use is banned under international treaties. What is the status of the international law on the use of CS gas? What are the physical effects of exposure to CS gas on children, the elderly and on individuals who had suffered gunshot wounds in the initial raid on February 28?

A. I was advised that, after consulting experts and studies on various non-lethal irritants, the FBI identified CS gas as the best option for meeting its objective of inducing persons to leave the compound with the least possible risk of harm. It was explained to me that CS gas, or tear gas, is a non-lethal, non-flammable particulant that causes no long-term harmful effects, even to infants, pregnant women, and the elderly. I specifically questioned its use on children, the elderly, and pregnant women, and persons with open wounds, and was advised that tear gas would pose no danger to any of those categories of persons. The propellant used with the CS gas was carbon dioxide which is also non-flammable.

The status of CS gas under international treaties was not addressed when we discussed its use. It was the consensus of the FBI's experts, military experts, and a doctor who responded to my questions that CS gas, or tear gas, may be safely used inside buildings. I made my decision based on the information available to me.

6. There have been press reports that when the tanks knocked out the walls of the compound, some existing exits and stairways were damaged, which would have made it more difficult for members to get out of the compound. Was this possibility considered in formulating the plan?
 - A. As the plan was presented to me, the tear gas was to be introduced in stages, in one portion of the building at a time, so that there would always be a sufficient number of exits. However, the plan also allowed the introduction of the tear gas into all portions of the building simultaneously if the FBI agents were fired upon from inside the compound. The individuals inside the compound did, in fact, fire upon the agents; therefore, a more complete introduction of tear gas was effected. The FBI agents also had the authority under the normal rules of engagement to return gunfire if fired upon, however, the FBI fired no shots at anytime during the standoff. The CEVs created more openings in the compound to insert tear gas as well as to provide additional avenues of escape.
7. According to a report in the New York Times, you said the gas "was intended" to induce serious negotiations for the evacuation of the compound' and that it was used only in certain areas where the agents did not believe it would harm children." However, FBI agent Bob Ricks stated that "the gas was meant to make their environment as uncomfortable as possible until they do exit the compound." He also said the agents had "covered almost the entire premises with gas."
 - Can you tell us which of these explanations is accurate?
 - Was the gas intended to "induce negotiations" or to cause an immediate exit?
 - A. Both explanations were accurate, and the statements attributed to me and to agent Ricks are not inconsistent. The purpose of using the tear gas was to induce persons inside the compound to come out or, at least, to engage in serious negotiations for their evacuation.

We also knew there was a possibility that the plan would not work and that there might be a violent response. As previously mentioned, our contingency plan, if violence occurred, was to introduce the tear gas throughout the compound. In that way, we hoped to disrupt any violent plan that was in progress and force them to come out. When the Branch Davidians began firing, tear gas was inserted into all windows and openings in the structure. By the time agent Ricks addressed the news media that morning, the plan had advanced to that stage and tear gas was being injected throughout the compound.

8. According to your April 19, 1993 press conference the decision to move against the compound was based on two primary factors: fatigue of the Hostage Rescue Team and evidence of child abuse by Mr. Koresh obtained through listening devices that the FBI had within the compound. The allegations of child abuse had been investigated by Texas Child Services and were found to be insufficient to bring charges against Mr. Koresh. Did the BATF or FBI have additional or newly-discovered evidence of child abuse occurring within the compound that the state officials did not possess?

A. Although I mentioned child abuse inside the compound as a factor in my decision, I do not believe I ever referred to evidence obtained through listening devices. In any event, as I clarified at the hearing, what we had was evidence that child abuse was a practice of David Koresh and that he took girls as young as twelve years old as his so-called "wives." We knew that children in the compound had had Koresh's babies. We knew that severe discipline of children, even infants, was practiced in the compound. We had no reason to believe that any of these practices had ceased and, indeed, interviews of some persons who left the compound early in the standoff corroborated what we already knew.

I cannot speak for the Texas Child Services. I do know from my experience as a prosecutor in Dade County that it is very difficult to prosecute a child abuse case without the full cooperation of the child and the caregivers. As long as the children and, in some cases, their parents were willing participants in the abuse that took place inside the compound, it would have been very difficult to obtain the evidence needed to mount an effective prosecution. That does not mean that we could turn our backs on the facts as we knew them.

9. When you considered the use of tanks to shrink the perimeter of the building, did you consider the possibility that a fire could break out?

A. I was told that, in reviewing all its tactical plans throughout the standoff, the FBI considered any number of possibilities, including fire. In fact, certain options that were considered, such as attempting to disable the water tank with an underground laser tool, were specifically rejected because they created the risk of fire. With respect to the introduction of tear gas on April 19, it was my understanding that the tear gas produced no risk of fire.

10. Were you aware that propane tanks and kerosene lamps were in use inside the compound?
- A. The FBI was aware of it. Again, we regarded the use of tear gas to be safe since it is non-pyrotechnic and was injected in a liquid form that could not have caused a fire. In fact, arson investigators have determined that at least three separate fires were deliberately set by persons inside the compound.
11. How soon after you took office were you first briefed on the situation in Waco?
- A. I took office on Friday, March 12, 1993 and to the best of my recollection, I was briefed on Monday, March 15, 1993.
12. Were the following policy positions at the Department of Justice been [sic] filled as of April 19, 1993?
- Deputy Attorney General
 - Associate Attorney General
 - Principal Associate Deputy Attorney General
 - Associate Deputy Attorney General (eight positions in previous administration)
- A. As of April 19, Philip Heymann had been nominated as Deputy Attorney General and Webster Hubbell had been nominated as Associate Attorney General. Only Webb Hubbell was on board, serving as Acting Associate Attorney General.
13. With which policy level person(s) at the Department of Justice did you consult regarding the Waco situation?
- A. I consulted with Webb Hubbell, and from the Criminal Division, Acting Assistant Attorney General Jack Keeney, Deputy Assistant Attorney General Mark Richard, Jim Reynolds, Chief of the Terrorism and Violent Crime Section, and Mary Incontro, Deputy Chief of the Terrorism and Violent Crime Section and Public Affairs Director, Carl Stern.

14. Did you ever consider visiting the Waco scene to get a first-person view of the situation?
- A. I considered it but did not go because I was not the expert on hostage negotiations or the tactics to be used in such a standoff and I did not think that it would be useful for me to intervene at the scene. I did not think I would learn anything that had not already been explained or depicted in my briefings.
15. Do you believe that there is a need for an objective and independent outside investigation of the entire Waco matter?
- A. I directed an internal inquiry into the matter which culminated in the "Report to the Deputy Attorney General on the Events at Waco, Texas" dated October 8, 1993. A critical evaluation of the law enforcement activities also was undertaken by Edward S.G. Dennis who issued a report on October 8, 1993, entitled "Evaluation of the Handling of the Branch Davidian Stand-Off in Waco, Texas." Additionally, ten experts in law enforcement and behavioral sciences, who were tasked to study the experience at Waco and our ability to handle hostage/barricade situations, made reports and suggestions for improvement which were compiled as "Recommendations of Experts for Improvements in Federal Law Enforcement after Waco" (June 25, 1993). On October 8, 1993, former Deputy Attorney General Philip B. Heymann issued a report, "Lessons of Waco: Proposed Changes in Federal Law Enforcement," which adopted some of the experts' suggestions and made recommendations as to improvements. These reports have been widely regarded as both candid and comprehensive; therefore I believe that any additional inquiries are unnecessary.
16. Who participated in the discussions and decision-making process, both at the FBI and at the Attorney General's office at Justice regarding the April 19 raid?
- A. The FBI officials who I understand participated in the process were Director William Sessions, Deputy Director Floyd Clarke, Associate Deputy Director Doug Gow, and from the Criminal Investigative Division, Assistant Director Larry Potts, Deputy Assistant Director Danny Coulson, and Mike Kahoe, Chief of the Violent Crimes and Major Offenders Section. The on-scene commander was San Antonio Special Agent in Charge (SAC) Jeffrey Jamar, who was supported by Oklahoma City SAC Bob Ricks, El Paso SAC Richard Schwein, and New Orleans SAC Richard Swenson.

At the Department of Justice, those who participated in the discussions and decision-making in my office were then-Acting Associate Attorney General Webb Hubbell, and from the Criminal Division, Acting Assistant Attorney General Jack Keeney, Deputy Assistant Attorney General Mark Richard, Jim Reynolds, Chief of the Terrorism and Violent Crime Section, and Mary Incontro, Deputy Chief of the Terrorism and Violent Crime Section and Public Affairs Director, Carl Stern.

17. FBI Director William Sessions testified: "When the fire broke out just after 1:00 our time, just after noon that [sic] time, the Attorney General had left the operations center. But as I recall, Mr. Hubbell was probably still there in the operations center, and Mark Richard was there as well. The Attorney General went to the Third Circuit conference (Baltimore) at about 11:15 our time and came back at about -- I think it was 1:30 or 2:00." (William Sessions, Committee on the Judiciary Hearing, April 28, 1993).

- When did you leave the operations center? Were you in contact with the operations center after leaving it?
- Were you in touch with the White House? With President Clinton? With Mr. Hubbell?
- Did you call from the conference to Washington? How many phone calls did you place from Baltimore or on your way to or from Baltimore, which related in whole or in part to Waco?

In your answers to the above questions, please list all calls and participants in the conversations.

- A. I left the FBI sometime after 11:00 a.m. when FBI officials concluded that the situation would be protracted and they urged me to go so as not to arouse concerns of imminent action by cancelling my speech. It was understood they would call me if conditions changed. After the fire started, I talked with Mr. Hubbell by telephone and he described the fire.

18. At the April 28, 1993 Judiciary Committee hearing you testified that: "Hubbell was talking to the White House that afternoon (April 19, 1993) and into the evening."

-- How many times did Mr. Hubbell communicate "that afternoon and into the evening" with the White House?

-- Did Mr. Hubbell speak directly with the President at any time regarding the Waco incident?

A. According to Mr. Hubbell's recollection, as recounted in the "Report to the Deputy Attorney General on the Events at Waco, Texas," he had one conversation with a White House official on the afternoon of April 19, 1993.

Mr. Hubbell never spoke directly to the President regarding the Waco incident.

19. Please list any and all communications, whether written, oral, electronic, or otherwise, which transpired between Hillary Rodham Clinton and Justice Department personnel, relating in whole or in part to the Waco incident?

A. None.

20. Please list any and all communications, whether written, oral, electronic, or otherwise, which transpired between Hillary Rodham Clinton and Mr. Hubbell, relating in whole or in part to the Waco incident?

A. None.



DIRECTOR

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

JUN 17 1993

Honorable Jack Brooks
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515-6216

Dear Mr. Chairman:

This is in response to your letter dated May 25, 1993, regarding additional questions by Mr. Mazzoli and the Republican Members pertaining to Waco.

1. It has been reported in the New York Times and elsewhere that the ABC and NBC television affiliates in Dallas were contacted by BATF Public Affairs officer Sharon Wheeler, and she made them aware that potential BATF activity in Texas might ensue over the weekend.

-- What law enforcement purpose did this notification to the press serve?

-- Should this be BATF policy?

Federal law enforcement is not exempted from responses to inquiries from the media just because the topics are typically law enforcement-related. Actions taken by the Bureau of Alcohol, Tobacco and Firearms (ATF) and other Federal law enforcement agencies have a broad impact on the public, and they are followed closely by the public. Many law enforcement agencies routinely alert the media in advance of significant law enforcement actions when it is recognized that coverage is likely. By organizing the media beforehand, agencies can prevent the media from threatening the safety and integrity of the operation. When the operation is high risk and the media is likely to inflame the situation, they obviously are not notified until the event takes place.

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Ms. Wheeler's contacts were solely for the purpose of obtaining contact numbers for making appropriate notifications after the planned Waco raid.

The Department of Justice (DOJ) has strict guidelines for releasing information to the media on matters involving criminal or civil investigations. ATF's media disclosure policy is based on these DOJ guidelines, which were followed during the investigation of the Branch Davidian compound. ATF requires compliance with existing DOJ media guidelines.

2. The Department of Justice has a policy that prohibits media presence at the execution of a warrant or other law enforcement action.

-- What is the expressed policy and practice of BATF in working with the media in law enforcement actions of this type?

DOJ has issued new interim guidelines prohibiting agencies from having media accompany them on warrants.

ATF has distributed these guidelines to our offices and directed compliance to follow them.

Our prior practice allowed ATF to take the media to a place open to the public from which it could cover the event, provided that this was consistent with the safety and integrity of an operation.

No media was invited by ATF to accompany us to Waco or to cover the Waco operation.

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Honorable Jack Brooks

3. Mr. Higgins, in a chronology made public by the BATF it states: "A local newspaper was planning to run a series of articles about the Branch Davidians, possibly naming individuals cooperating with BATF." How did the local newspaper know which individuals were cooperating with the BATF?

ATF was aware that individuals whom we had interviewed had spoken with or had been contacted by the newspaper. We were less concerned that the paper would say that these individuals were cooperating with ATF than that, by quoting them, the paper would identify them to Koresh as individuals talking about evidence of wrongdoing. ATF did not provide any information to the newspaper or other media concerning the investigation.

4. The local sheriff had successfully served warrants on Koresh on prior occasions. Why did the BATF believe it was going to be necessary to use force to serve its warrant?

The information we had developed indicated that the McLennan County Sheriff's Department has never executed an arrest or search warrant on either Koresh or the compound. Koresh and others were arrested when the Sheriff's Department responded to a call regarding a shooting on the property. In addition, on one occasion, the Sheriff's Department had an arrest warrant. The subject was not apprehended.

5. Some witnesses have noted that Mr. Koresh was often seen in town in October through December of 1992. Why was he not served and arrested on one of his visits to town?

ATF did not have an arrest warrant for Mr. Koresh until February 25, 1993.

Honorable Jack Brooks

6. On March 4, 1993, Dan Hartnett, Deputy Associate Director of BATF, was reported saying that "we tried to get him (i.e. Koresh) out at different times in the past few months. He stayed in there."

-- Can you further explain your efforts to get Mr. Koresh out of the compound?

-- Is it true that he became afraid to leave the compound because he feared the ATF was after him?

Attempts to get Koresh off the Branch Davidian compound were coordinated with officials of the Texas Department of Human Service, Child Services Division. This coordination involved efforts on the part of the Child Services Division to lure Koresh off the compound to their Waco office to discuss concerns about the welfare of the children who were living at the compound. These concerns stemmed from reports received by the Child Services Division regarding both the sexual abuse of young girls and the presence of firearms on the compound.

ATF has never documented any evidence that Koresh became afraid to leave the Branch Davidian compound because he believed ATF was after him.

7. When did the BATF first start its investigation of the Mount Carmel Compound? Why did BATF initially begin surveillance of Mr. Koresh and the Davidians?

ATF began its investigation of the Branch Davidian compound on June 4, 1992. ATF initially established surveillance at the compound to further the probable cause necessary to obtain a Federal search warrant to search the premises, and to obtain intelligence information to assist in the strategy and tactical planning for execution of the search warrant. The surveillance also focused on the identification of those present on the compound premises, with specific emphasis on the activities of Koresh and his lieutenants.

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8. What laws within the jurisdiction of the BATF did Mr. Koresh or other individuals within the compound allegedly violate, leading to the issuance of the first warrant in the days before February 28, 1993?

The Federal search warrant, case number W93-15M, was issued on the probable cause to believe that unregistered machineguns and destructive devices were being concealed on the Branch Davidian compound premises in violation of 18 and 26 U.S.C.

The Federal arrest warrant for Vernon Wayne Howell, case number W93-17M, was issued on the belief that Howell was in unlawful possession of an unregistered destructive device in violation of 26 U.S.C.

9. The element of surprise was critical to the BATF's efforts to safely execute the search warrant against the compound. Yet, the attempt to serve the search and arrest warrants on February 28, 1993, raises questions of timing, leaks, and loss of the element of surprise. Bob Lott, editor of the Waco Tribune-Herald, has stated that Federal agents had requested the paper to delay publication of a series on the Davidians. Lott said he delayed for about a month for other considerations but that the paper also listened to their concerns.

-- Why was such a request made?

-- Might not the request to delay publication actually have the effect of increasing interest and speculation among the media as to BATF's activities in the Waco area?

The request to Bob Lott, editor of the Waco Tribune-Herald, to delay publication of the series on the Davidians was made in an attempt to avoid raising concerns among the Davidians about public awareness of potentially illegal activities occurring within the compound. ATF had planned to execute the Federal warrants on March 1, 1993. It was the Bureau's considered judgment that a direct approach to the paper's editor, asking for an unspecified period of delay, would not pose a threat to the safe completion of the planned activities.

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Although it might be said that the request to delay publication of the series on the Davidians could result in heightening media interest and speculation as to ATF's activities in the Waco area, this situation would not have posed an imminent threat to the successful execution of the planned raid. All ATF needed was a couple of days leeway and this would have become a moot issue.

10. The New York Times also notes that by the weekend of Saturday, February 27, it was clear to Waco residents that the raid was going to be a big event. That paper notes the scores of federal agents that had arrived in town and how hotel workers recalled watching in amazement Sunday morning as agents in army fatigues set out for the staging area. In any event, the April 19, 1993, issue of The Washington Times, quotes Dan Hartnett, Deputy Associate Director of BATF, as saying "There is no doubt they were expecting our arrival."

-- On that morning in Waco, did anyone at BATF, to your knowledge, either on the scene or elsewhere, have the slightest hint that the compound may have known you were coming?

At 4 a.m. in the morning, February 28, 1993, approximately 90 ATF special agents, which included the Houston, Dallas, and New Orleans Special Response Teams, departed Fort Hood, Killeen, Texas, for Waco in preparation for the raid. Upon arrival in Waco, these special agents went to a staging area to make final arrangements for serving the search warrant.

Approximately 40 other ATF personnel (secretarial, administrative, laboratory, and investigative) did stay in Waco the night before the raid; however, they were instructed not to wear any ATF clothing until the early morning hours of February 28. These people stayed at two different motels in Waco.

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In the early morning hours of February 28, ATF did not have any idea that the raid might have been compromised. However, at approximately 9:05 a.m. the undercover agent left the compound and drove over to the undercover house, where he related to supervisory personnel that Koresh made reference to ATF and the National Guard are coming. In the past, Koresh had made similar comments about ATF. The specifics as to the exact nature of that conversation will be fully reported in the findings of the ongoing Treasury review.

11. The Department of Justice has issued written guidelines for undercover operations.

-- Does the Department of Treasury or the BATF have any such guidelines?

-- Were they followed in this instance?

ATF Order 3210.7B, Investigative Priorities, Procedures, and Techniques, chapter E clearly addresses the issue of undercover operations. These guidelines were followed in the Koresh investigation.

12. Given the flat terrain, the Davidian firepower, and the nature of the structure and compound, even with the element of surprise, could the BATF raid have been successful?

Yes. The tactical plan for the execution of this warrant involved multiple concepts which, when compiled, would contribute to the success of the raid. The tactical plan called for the teams to travel to the compound in covered horse trailers, which allowed them to conceal the identity of the agents until the last possible minute. At Fort Hood, 3 days prior to the raid the three special response teams repeatedly rehearsed both their exit from the trailers and their entry into the compound. This training indicates that only 30 seconds would be required for the teams to gain access. ATF had gained intelligence that conveyed that, subsequent to the Sunday morning prayer meeting, members of the Branch Davidians would segregate into groups to perform their daily work. The women and

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children would be in one area, and the men would be in another. The quick entry, as practiced at Fort Hood, would allow the teams to isolate the women and children from the men and also to isolate the members of the compound from the weapons.

-- In hindsight, should the BATF have stepped back, continued surveillance and waited it out while securing the perimeter and keeping the press out?

ATF's major concerns were the safety of the agents involved in executing the warrant and the safety of individuals inside the compound. We had obtained information indicating that a "suicide pact" was in place within the compound. It was our belief that if we secured a perimeter and began a siege, Koresh would put this suicide pact into motion, as ultimately occurred.

If and when a mass suicide began, there would be no way to stop it. ATF believed the best plan was to seize the arms cache and secure all cult members so they could not harm special agents or themselves.

13. Considering that BATF suspected the Davidians had assembled explosives and automatic rifles, and this was the very rationale for the warrants and their attempted execution, how could the BATF be surprised by the firepower, or in its own words, be "outgunned"?

The use of the term "outgunned" as ATF's "own" word is not entirely correct. Though the term was used in a statement made by the Public Information Officer from the Dallas Field Division, it has been ATF's position that the firepower carried by the agents would have been sufficient if the raid plan had not been compromised.

The plan was based on the element of surprise. Had this been successful, the weapons inside the compound would have been secured and not readily available for use against the agents. ATF was not surprised by the amount of firepower; the only surprise was that the plan was compromised and the weapons were used to ambush the agents.

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-- Was the BATF's intelligence on the weaponry accurate?

Prior to the raid on February 28, 1993, we had developed information that the compound was in possession of over 200 assault style rifles, many of which had been converted to fully automatic. Additionally, our intelligence indicated that the compound had .50-caliber weapons and a large quantity of explosive components and materials from which destructive devices could be assembled. Our seizure from the scene, after the fire of April 19, 1993, confirmed our earlier intelligence.

14. The March 28, 1993 issue of the New York Times reports that the agents, knowing they could be facing heavy fire, asked for permission to take automatic weapons, e.g., M-16s. These agents were told they could only use their semiautomatic handguns. Is this true? Why?

During the planning phase the team supervisors developed their equipment requirements, which included some weapons that are not standard issued firearms. The requests received for specific weapons were approved. We do not have M-16 automatic rifles as service weapons; only the semiautomatic version, known as the AR-15, is available. Six of these rifles were requested and eight were authorized for use. Also, the following weapons were carried by the agents in addition to their service pistols: four .308-caliber rifles, 12 shotguns, and 27 H&K MP-5 tactical carbines.

15. Under what authority were helicopters obtained from the National Guard in the original raid?

The Texas National Guard authority to assist ATF was conducted in accordance with Title 10 and Title 32 of the U.S. Code.

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Isn't it true that they would only be obtainable in non-military operations for drug enforcement, and then only with the Governor's permission?

No. The Texas National Guard is authorized to assist law enforcement through appropriate reimbursable agreements or through the approval of Joint Task Force 6.

According to her spokesperson, Texas Governor Ann Richards was not notified of suspected drug activity within the compound until one month after the Texas National Guard had participated in the initial raid. Why was the Governor not notified prior to the raid? Was the law violated in this instance?

Governor Richard's staff was notified of the use of the Texas National Guard well in advance of the raid. No laws were violated in this instance.

16. Did BATF think the Branch Davidians were engaged in gun trafficking?

No. ATF broadly defines gun trafficking as the acquisition of firearms for the principal purpose of making them available to the criminal element and/or to persons in areas where State and local laws limit the availability of firearms. Although we were aware that some members of the Branch Davidian compound were frequenting gun shows, we did not classify them as gun traffickers by our definition. However, during the first 3 months of our investigation, we were able to document the stockpiling of nearly 100 firearms at the Branch Davidian compound.

17. Were adequate ambulances and EMTs present on the morning of February 28, 1993? Could the leak have come from those personnel?

The medical plan was designed in separate levels. With the special response teams, there were at least three ATF special agents who are trained EMTs. In addition, one is a surgical nurse in the Air National Guard. These special agents/EMTs were at the scene with the special response teams. In fact, while under

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heavy fire they treated wounded ATF special agents. Special agents/EMTs even administered intravenous fluids to wounded comrades during the gunbattle. Few law enforcement agencies could do the same.

At the second level in the medical plan, prior to the actual execution of the raid, two ambulances staffed by EMTs were present at one of the roadblocks. The roadblock was located approximately 1 mile from the Branch Davidian compound.

In addition, one "Care Flight" emergency helicopter, staffed with advanced emergency personnel, was contracted to be on standby at the ATF command post, which was located at the Texas State Technical College, Waco, Texas. An additional Care Flight helicopter was also placed on alert status.

In order to be even better prepared, ATF had made prior checks on availability of hospital trauma centers to discover their capacities and capabilities. ATF special agents had marked their blood type on their skin with alcohol pencils just in case anyone was wounded during the raid.

The events regarding the "leak" are part of the criminal investigation being conducted by the Texas Rangers. It would be inappropriate to make any comment concerning this issue at this time.

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18. One of the BATF affidavits to the unsealed warrants notes that early in the morning of February 28, 1993 an undercover agent entered the compound and met with Mr. Koresh and others. Koresh was then summoned from the room by another Davidian. At about that time another Davidian arrived at the compound after learning that the compound might be raided that day. Shortly thereafter, Mr. Koresh returned to the room where the agent waited and exclaimed that the BATF and the National Guard were coming to get him. Mr. Koresh continued saying neither BATF or the National Guard will ever get him. They got him once, and they will never get him again....they are coming; the time has come. The March 28, 1993 issue of the New York Times states that, according to two agents, at about this point [the undercover agent left the compound] and alerted Jim Cavanaugh, Assistant Special-Agent-In-Charge, Dallas, that Koresh knew something was about to happen. The agents said that Cavanaugh and the other agents decided to move ahead as quickly as possible, aware that they no longer would surprise the Davidians but hoping they could attack before the Davidians were ready for them. Yet, approximately 40 minutes elapsed before the raid commenced. Would you comment on these representations as reported in the New York Times? Are these the facts?

The above statements and corresponding questions are at the heart of a criminal investigation concerning the news leak(s), which is now being conducted by the Texas Rangers. It would be inappropriate to make any comment concerning these issues at this time.

Why would Mr. Koresh have mentioned the National Guard?

Investigation determined Mr. Koresh has on previous occasions mentioned the National Guard, ATF, and other Federal agencies.

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19. The affidavit used to obtain the search and arrest warrants noted that BATF checked in June of 1992 to see whether David Koresh or David Jones had federal firearms licenses or whether David Koresh or Paul Fatta had registered NFA weapons.

-- With an estimated 50 adults living at the Mount Carmel Center, was a more recent check made with regard to those men and was any check made with regard to any of the other adults living in the compound? If undertaken, what was the result of those checks?

Yes. On January 25, 1993, all adults known or suspected of residing at the Branch Davidian compound were checked by ATF's Licensing Section and National Firearms Branch to determine whether they had Federal firearms licenses or National Firearms Act firearms registered to them. All these checks were negative.

20. Residents of Waco reported seeing Mr. Koresh around at various times in the months leading up to the February 28th raid. There have also been reports that he frequently jogged outside the compound. Why was an arrest warrant not issued for him until February 25th?

Arrest warrants are not routinely obtained for prospective defendants in advance of a search warrant. In this investigation, after careful consideration of all of the facts, the Bureau decided to seek an arrest warrant in advance of the search warrant. The last factual pieces of information that were to be included in the affidavit for Koresh's arrest warrant were not obtained until February 22, 1993, during our undercover contacts with Koresh. This led us to seek the U.S. attorney's concurrence for the issuance of the arrest warrant that was issued on February 25, 1993.

We believe the jogger reported seen in the area of the compound was in fact one of the undercover ATF special agents living in the house near the compound.



Honorable Jack Brooks

21. Could it have been possible to arrest Koresh at any point prior to February 28th, outside of the compound and away from his followers?

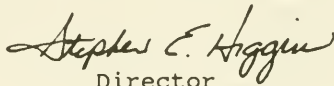
ATF has never observed Koresh off the curtilage of the Branch Davidian compound. If he had been observed off the compound after February 25, 1993, and prior to February 28, 1993, he could have been arrested.

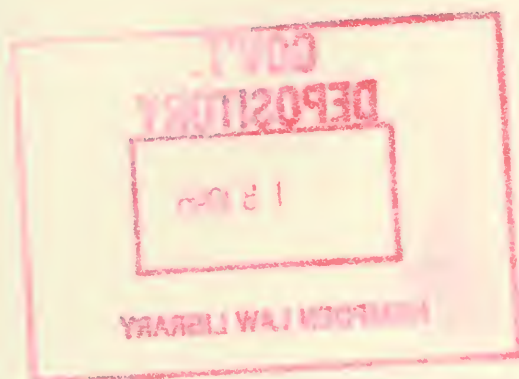
22. Why was Koresh not under 24 hour surveillance both before February 25th and after that date, which, were he to leave the compound for any reason, would have allowed his apprehension when he was away from his weapons cache, and thereby hinder his ability to direct his followers against Federal law enforcement officials in an ensuing raid on the compound?

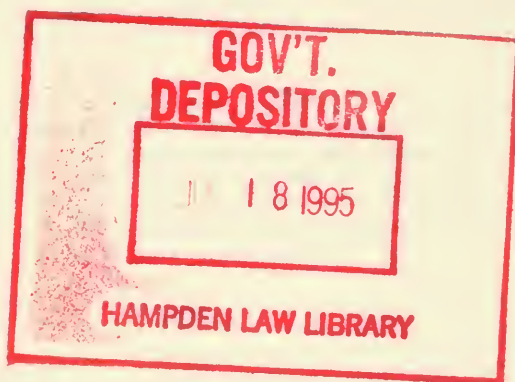
ATF did establish a 24-hour surveillance on the Branch Davidian compound on January 11, 1993, during which time ATF never observed Koresh leaving the Branch Davidian compound. Several days before February 28, the surveillance was discontinued for the nighttime hours when it was determined there was no traffic coming in or out of the compound during that timeframe. Again, Koresh was never observed by ATF leaving the site.

We hope we have been responsive to your letter. Please let us know whenever we may be of service.

Sincerely yours,


Director





ISBN 0-16-047257-1



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